THE YEAR IN REVIEW:
WHAT'S HAPPENING IN SPECIAL EDUCATION LAW?

31ST ANNUAL STATE SUPERINTENDENT'S CONFERENCE ON SPECIAL EDUCATION & PUPIL SERVICES LEADERSHIP ISSUES

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Although the IDEA has not changed since 2004, there is an enormous amount of litigation going on, as courts and agencies attempt to interpret and apply the law's provisions. In addition, there has been an inordinate amount of court and agency activity with respect to the requirements of Section 504 and the ADA. In this whirlwind session, Julie will update the audience on significant special education "legal happenings" during the past year, including court and federal agency decisions and interpretations.

MONEY DAMAGES/LIABILITY/PERSONAL INJURY GENERALLY

A. Shadie v. Hazleton Area Sch. Dist., 64 IDELR 35 (3d Cir. 2014) (unpublished). School district is entitled to summary judgment on the 504 damages claims because the parent did not show intentional discrimination. After finding out that the teacher's aide in March 2008 had reportedly grabbed, shaken and yelled at a 12th-grader in the special education classroom, the district removed the aide from the classroom. A January 2008 incident where the aide allegedly knocked the student's feet off his chair after he "shut down" in the classroom was never reported to administrators. As a result, the parent cannot show deliberate indifference on the part of school personnel required for the student's Section 504 claim.

B. Robinson v. Peirce, 64 IDELR 97 (3d Cir. 2014) (unpublished). Neither the district's failure to inform a substitute bus driver of the student's disabilities nor its failure to assign a staff member to assist the student during a bus evacuation drill made it liable for the broken femur the student suffered when he fell from the emergency exit. Where there is insufficient evidence of deliberate indifference on the part of the district itself, the parents' damages claims against it under Section 1983 are dismissed. Although the student's IEP included multiple accommodations for the student's osteoporosis and visual impairment, including excluding him from contact sports in PE, the district had no reason to assign a staff member to him during the bus evacuation drill. Rather, the district was entitled to expect that the substitute bus driver would identify students who needed assistance and personally supervise the evacuation as required by the Pennsylvania School Bus Driver's Manual. Had the driver done that, any risk of injury during the evacuation drill would have been greatly lessened. In addition, there is no evidence that the district intentionally withheld information about the student's needs; rather, any failure to notify the driver was "bureaucratic oversight."

C. Rosenstein v. Clark Co. Sch. Dist., 63 IDELR 185 (D. Nev. 2014). Citing to 9th Circuit authority, the parents' failure to allege inaction by the district or its administrators required dismissal of their Section 1983 claims against school- and district-level administrators for damages suffered at the hands of special education teachers and aides. Supervisors are generally not liable for their employees' misconduct unless they participated in the alleged violations or know of those violations and fail to respond. Here, there are no factual allegations that the administrators were previously aware of the alleged violation and did nothing to

prevent it or that administrators participated in or directed the violation. However, the Section 1983 claims against classroom personnel will remain where it is alleged that they grabbed or pinned the child "in an overly aggressive manner."

D. K.W. v. Lee Co. Sch. Bd., 64 IDELR 238 (M.D. Fla. 2014). Parents cannot pursue a Section 1983 claim for damages where they failed to allege "conscience shocking" behavior on the part of three employees who allegedly were deliberately indifferent to the student's statements that she had injured her foot and was unable to walk without severe pain. The parent did not allege any physical contact by the employees; nor did she claim that the employees intended to injure or punish the student (who had severe pulmonary and respiratory problems and had gained significant weight as a side effect of her medications). This case is distinguishable from cases in which school employees intentionally inflicted excessive corporal punishment. Although this student was only 8 years old at the time of the alleged incident and was threatened with disciplinary action if she did not participate in PE, the employees' conduct does not "shock the conscience."

E. J.S. III v. Houston Co. Bd. of Educ., 115 LRP 35063 (M.D. Ala. 2015). Even where the 4th grade student was removed from his general education setting, which may have amounted to an IDEA violation, it did not amount to disability discrimination under Section 504 or the ADA. Parents seeking relief under Section 504/ADA must allege more than a denial of FAPE under the IDEA. The parents did not produce any evidence suggesting that the district acted with discriminatory intent, and the principal's knowledge of the removals did not put the district on notice of the aide's alleged physical or verbal abuse.

F. K.M. v. Chichester Sch. Dist., 65 IDELR 6 (E.D. Pa. 2015). Section 1983 claims against a bus driver and aide are dismissed based upon the doctrine of qualified immunity. Governmental actors are entitled to qualified immunity if their conduct does not violate a clearly established constitutional right. A right is "clearly established" if, under the circumstances, a reasonable official could not have believed his conduct was lawful. In this case, the question is whether a reasonable school official would recognize that the procedures for securing vehicles used to transport students could potentially affect a student's constitutional rights. While the improper supervision of students with disabilities could amount to a violation of clearly established constitutional rights in some cases, these employees had no reason to suspect that their end-of-shift procedures that resulted in their locking up the bus for the night with a sleeping autistic student on board had constitutional implications. NOTE: In a related case, the same court refused to dismiss Section 1983 claims against the school district based upon a "state-created danger" theory and the failure to train bus drivers on end-of-shift procedures. K.M. v. Chichester Sch. Dist., 65 IDELR 5 (E.D. Pa. 2015). While parents seeking damages under such theories must allege conscience-shocking conduct, the level of culpability needed to "shock the

conscience" is not as high when the alleged injuries result from an unhurried judgment as opposed to a snap decision. Here, the district should have known that the student's autism would make it more likely that he would fall asleep and fail to exit the bus at his assigned stop. Further, the "emotional fragility" that many autistic children exhibit makes it more likely that the student would suffer psychological harm when waking up alone on the closed-up bus. The district's argument that checking the bus for children was a matter of "common sense" that did not require training is rejected.

G. H.B. v. State Bd. of Educ., 65 IDELR 200 (E.D. N.C. 2015). Parents may sue N.C. School for the Deaf employees responsible for assigning a student to the same room as a schoolmate who allegedly raped him. The parent sufficiently stated a "state-created danger" claim under Section 1983. While educators are not generally responsible for injuries caused to students by third parties, they may be liable if they intentionally or with reckless indifference place the student in the dangerous situation. Here, the parent claimed that employees had actual notice that the schoolmate had a history of verbal, emotional and physical bullying of the student during his day placement at the school. In addition, the school's Director allegedly assured the parents that he would take steps to separate the students. Further, the parents alleged that the school knew about the sexual abuse the schoolmate had suffered in his own home. Nonetheless, they assigned both boys to the same dorm room on the first night of the student's residential program. The student requested that he be moved to a different room, but the request was denied. Without deciding the truth of these claims, the parents have stated enough to deny dismissal of the complaint.

H. Pantell v. Antioch Unif. Sch. Dist., 65 IDELR 2 (N.D. Cal. 2015). Parent's claims for money damages under Section 1983 are dismissed based upon her failure to show that the Superintendent had actual knowledge of a dangerous environment at the private school where the student was placed. Superintendents and other district officials do not generally have an obligation to protect students from harm by third parties unless the district affirmatively places the student in danger. However, a parent cannot establish liability under a "state-created danger" theory without showing that the district had actual knowledge of a dangerous situation. The parent here did not plead any facts showing that the Superintendent knew the private school employees posed a danger to her child; nor did she allege that the Superintendent intended to expose the child to harm. Rather, the parent made vague references to "claims" and "reports" of prior incidents involving other students at the school but provides no specifics.

I. Ripple v. Marble Falls Indep. Sch. Dist., 65 IDELR 98 (W.D. Tex. 2015). There is no evidence that the school district acted in bad faith or with gross misjudgment with regard to the student's physical safety. Thus, the student's 504 disability discrimination claims are dismissed. According to the student, the district violated athletic association rules and its own policies and procedures when it failed to ensure that the football coach and trainer had adequate training on

concussions and head injuries. He also claimed that football personnel encouraged him or allowed him to engage in unreasonably dangerous athletic activities. However, the student's physician cleared him to play football every year and the athletic trainer pulled him from a game in which he suffered a concussion. Further, the trainer followed up with the student the following season and the student insisted that he could play. The only concussion that the student informed the athletic team about was that one and he avoided reporting and seeking treatment for his concussive symptoms thereafter in an attempt to remain competitive for college scholarships. While a failure to identify the signs of a concussion could potentially amount to negligence, the district here did not intentionally discriminate against the student under Section 504.

J. Doe v. Darien Bd. of Educ., 65 IDELR 194 (D. Conn. 2015). District's motion for judgment in a case for damages brought under Section 504 and the ADA is denied, because there is an issue of fact as to whether the district failed to conduct an appropriate investigation of the student's reported sexual abuse by his one-to-one aide. Where the district argued that the student's cognitive and communication impairments had no impact upon its decision not to investigate the student's reports, testimony by district and school officials raised issues as to whether the district gave the student's reports the weight that they deserved. For instance, the special education director stated that she would not believe any allegations of abuse made by this student based upon his history of confusing in-school and out-of-school events. Other officials made similar statements that they did not believe the student because he also "talks about robbers and kissing and different things." In addition, the assistant superintendent failed to interview the student or the parents and the school psychologist testified that she did not believe the aide would engage in inappropriate behavior.

BULLYING AND DISABILITY HARASSMENT

A. G.M. v. Dry Creek Joint Elem. Sch. Dist., 64 IDELR 231 (9th Cir. 2014) (unpublished). The affirmative steps that the district took when it learned that a 6th grader with dyslexia had experienced disability-based bullying in PE helped it to avoid a claim for money damages under Section 504. The parents did not prove that the district was deliberately indifferent to the harassment and the district court was correct in finding that district personnel appropriately responded to five reported incidents of disability-based bullying by a classmate in PE. In addition to the PE teacher and school counselor speaking to the offender about his misconduct, the PE teacher prevented the bully from working with the student. In addition the assistant principal suspended another classmate who punched the student's arm, causing a bruise.

B. Estate of Barnwell v. Watson, 64 IDELR 8, 44 F.Supp.3d 859 (E.D. Ark. 2014). Where the parents' allegations, if true, suggested that the district was deliberately indifferent to disability and sexual harassment, the superintendent's motion to dismiss 504 and Title IX claims is denied. The parents' complaint sufficiently

alleges deliberate indifference where the student wrote a letter to his school counselor stating that he wanted to leave school because he had no friends and could not handle "being an outcast for four more years." In addition, the parents alleged that the student's mother and private therapist met with the IEP team the next day and stated that the student's desire to drop out of school stemmed from peer harassment. There was apparently, however, no plan put in place by the district to further investigate or address these concerns. Thus, the complaint as a whole states a plausible claim for relief under 504 and Title IX.

C. T.K. v. New York City Dept. of Educ., 63 IDELR 256, 32 F.Supp.3d 405 (E.D. N.Y. 2014). School district's response to peer bullying was inadequate where the district failed to address the issue in the disabled child's IEP or BIP. A district denies FAPE where it is deliberately indifferent to or fails to take reasonable steps to prevent bullying that substantially restricts the educational opportunities of the disabled child. If an IEP team has a legitimate concern that bullying will significantly restrict a child's education, it must consider evidence of bullying and include an anti-bullying program in the student's IEP, which was not done in this case. Here, the parents tried to discuss bullying during a June 2008 IEP meeting but were told by district members of the team that it was not an appropriate topic for discussion. Further, the IEP focused on changing behaviors that made the child susceptible to bullying rather than to ensure that peer harassment did not significantly impede her education. It was clear that the bullying interfered with the child's education, where she began bringing dolls to class for comfort, she gained 13 pounds and had 46 absences or tardies in one school year. Further, her special education itinerant collaborative teachers testified that classmates treated the child like a "pariah" and laughed at her for trying to participate in class. Thus, the district's inadequate response, coupled with the impact on the child's learning denied FAPE and entitled her parents to recover the cost of the child's private schooling.

D. Dear Colleague Letter, 64 IDELR 115 (OCR 2014). If an alleged victim of bullying is receiving services under Section 504 or the IDEA, the school's response to bullying allegations should include determining whether the bullying impacted the student's receipt of FAPE and, if so, convening the student's IEP or 504 team to address that impact. The obligation to address a bullying victim's ongoing ability to receive FAPE exists regardless of whether or not the student is being bullied based on a disability. In addition, it exists whether the student is receiving services under the IDEA or under Section 504. Changes that might trigger the obligation to convene the team and amend a student's IEP or 504 plan might include a sudden decline in grades, the onset of emotional outbursts, an increase in the frequency or intensity of behavioral outbursts, or a rise in missed classes or sessions of Section 504 services. "Ultimately, unless it is clear from the school's investigation into the bullying conduct that there was no effect on the student with a disability's receipt of FAPE, the school should, as a best practice, promptly convene the IEP team or the Section 504 team to determine whether, and to what extent: 1) the student's educational needs have changed; 2) the

bullying impacted the student's receipt of IDEA FAPE services or Section 504 FAPE services; and 3) additional or different services, if any, are needed, and to ensure any needed changes are made promptly."

E. Nevills v. Mart Indep. Sch. Dist., 65 IDELR 164 (5th Cir. 2015) (unpublished). Parents failed to demonstrate deliberate indifference on the part of the school district to disability-based harassment. Districts are not required to "purge" schools of bullying to avoid liability under the ADA and Section 504. Rather, the deliberate indifference standard requires focus on whether the district reasonably responded to reported incidents of peer harassment. While the district did not punish alleged offenders in every incident, the notes from the principal's investigations support her decision not to do so in some instances. In addition, the principal hired an outside organization to conduct teacher training on bullying and scheduled a presentation for the 5th and 6th grade boys, and training was conducted based upon two nationally-recognized programs designed to teach kindness and compassion to students. Thus, the parents' claims are dismissed.

F. K.R.S. v. Bedford Comm. Sch. Dist., 65 IDELR 272 (S.D. Iowa 2015). The 9th grader with SLD is not required to show that his football teammates understood the exact nature of his disability in order to show disability-related harassment. The teammates' general knowledge that the student received special education services, along with the comments that he was "stupid" and "dumb," could establish a link between the alleged harassment and his disability. The district's suggestion that the student is required to show that the other students who allegedly harassed him did so specifically because he struggled with writing in English class is rejected as a "tortured interpretation of the required elements for a Section 504 harassment claim. Rather, the student only needs to show that his teammates' actions were reasonably connected to his disability. Although the evidence appears "skimpy," the teammates' purported taunts of "idiot" and "moron" suggest a link to the student's SLD. In addition, the alleged bullying was sufficiently severe and pervasive where the student was hospitalized with a head injury after two teammates reportedly threw footballs at his head. Thus, the district's motion for judgment on the student's 504 claim is denied.

G. V.S. v. Oakland Unif. Sch. Dist., 65 IDELR 234 (N.D. Cal. 2015). Parent states viable claims under Sections 1983 and 504 for disability-based bullying on the school bus. While the district maintains that it was unaware of the alleged harassment, which allegedly occurred on a bus owned and operated by an independent contractor, the complaint alleges that the bus driver told the parent that she had contacted district officials about the bullying and had not received a response. Thus, the driver's purported statements raise questions about the district's knowledge and the district's deliberate failure to protect the student from known bullying and assault on the school bus.

H. M.S. v. Marple Newtown Sch. Dist., 64 IDELR 267 (E.D. Pa. 2015). Although the court does not have jurisdiction because the parent is required to exhaust administrative remedies, there is not enough to sustain the parents' disability harassment claims under Section 504 or the ADA. The parents' failure to identify any specific acts of bullying motivated by their daughter's disability entitles the district to judgment. A classmate's alleged conduct, which included "staring" and "leering" at their daughter in class and pointing cameras at her in school, does not appear to have any connection to the student's anxiety or PTSD. Similarly, the parents fail to point to evidence that district action or inaction was motivated by disability discrimination. In addition, the district took numerous steps to address the student's anxiety, including placing her in separate classes when possible, allowing her to attend an emotional support class, and providing homebound services when her anxiety prevented her from attending school. As a result, the parents could not show that the district was deliberately indifferent to the classmate's alleged harassment.

I. Eskenazi-McGibney v. Connetquot Cent. Sch. Dist., 65 IDELR 8 (E.D. N.Y. 2015). Parents of disabled teenager cannot pursue their 504 or Title II claims alleging disability discrimination and retaliation. While the parents described multiple incidents in which another student struck or threatened to kill their son, the complaint does not indicate that the schoolmate's purported conduct was based on the student's disability. While students with disabilities do tend to be bullied more frequently than their nondisabled peers, the fact that bullying occurred at all does not establish a discriminatory animus. "To hold otherwise would convert the ADA and [504] into generalized anti-bullying statutes." In addition, the failure to link the alleged harassment to disability impacted upon the retaliation claims, such that the parents' complaints to district officials did not constitute "protected activity" under Section 504 or ADA. Thus, the parents could not show that the district's subsequent ban on direct parent-teacher contact or its decision to exclude the parents from school grounds constituted retaliation as a matter of law.

J. Visnovits v. White Pine Co. Sch. Dist., 65 IDELR 167 (D. Nev. 2015). Student failed to establish an ADA or 504 claim for disability harassment where her statement that she did not report prior incidents of bullying by another student in her yearbook class undermined her claim that the district was deliberately indifferent to known disability-based harassment. While the 9th Circuit has not adopted a test for deliberate indifference to disability harassment, the Supreme Court's standard for sexual harassment will be used here, requiring the student to prove that: 1) she had a disability; 2) she was harassed on the basis of disability; 3) the harassment was so severe or pervasive that it created an abusive educational environment; 4) the district knew about the harassment; and 5) the district was deliberately indifferent to it. The student also stated that she did not know why the bully targeted her and she noted that she would not doubt the other student if that student indicated that she did not know that a disability even existed. Thus, she cannot prove the necessary elements of her claim.

RETALIATION

A. Batchelor v. Rose Tree Media Sch. Dist., 63 IDELR 212 (3d Cir. 2014). Where the IDEA allows parents to present a due process complaint with respect to "any matter relating to the provision of FAPE," this parent is required to exhaust administrative remedies prior to bringing her retaliation claims under Section 504 and ADA seeking money damages. According to the parent's complaint, the district refused to implement the student's IEP, stopped paying for private tutoring and reassigned the student to a teacher that he considered to be a "bully" after the parent sought to enforce a 2010 FAPE settlement. Based upon that, it is "plain" that the parent's retaliation claims "palpably related" to the district's provision of a FAPE. Thus, the exhaustion requirement applies, and the parent's argument that her request for money damages brought her claim outside the scope of the IDEA is rejected.

B. B.D. v. District of Columbia, 64 IDELR 46 (D. D.C. 2014). Parents' retaliation claim is dismissed where they failed to show that the District reported them to child welfare authorities to punish them for advocating on their multiply-disabled son's behalf. Rather, D.C. law requires school officials to report any instances of child neglect, which includes a child having 10 or more unexcused absences in a single school year. Here, the parents failed to enroll the student in any school after rejecting a proposed residential placement, so the district had a legal obligation to report the nonattendance.

C. Wenk v. O'Reilly, 65 IDELR 121, 783 F.3d 585 (6th Cir. 2015). Case will not be dismissed on the basis of qualified immunity against Director of Pupil Services alleging retaliation under the First Amendment based upon the parent's advocacy on behalf of his daughter. A report of child abuse, as was made in this case, qualifies as retaliation under the First Amendment if the parent's advocacy plays any role in the decision to report. Critical comments that the Director made about the father in emails she sent to other district employees after IEP meetings suggest that she harbored "animus" toward him. In addition, teachers whose statements allegedly formed the basis of the child abuse report denied telling the Director about the most shocking charges against the parent. Although the Director's report contained some true allegations, the facts taken in the light most favorable to the parent suggest that she embellished or fabricated other allegations, including those that most clearly suggested sexual abuse. The Director's claim that she would have filed the same report whether the father advocated for his daughter or not is rejected, as the Director had the information underlying her report for 3 weeks before she filed it and the she made the report 3 weeks after the Ohio DOE contacted her about parent concerns. A reasonable official in the Director's position would have known that such conduct was retaliatory. Thus, the district court's denial of qualified immunity is affirmed.

D. Smith v. Harrington, 65 IDELR 95 (N.D. Cal. 2015). Parent's 504 and ADA claims that the district reported him to child welfare authorities for abuse in

retaliation for his advocacy on behalf of his daughter are dismissed. As an initial matter, the parent cannot sue for retaliation after unsuccessfully raising that argument in a state court proceeding about the abuse allegations. Even if he did have the right to sue, he could not prove that the principal and school psychologist reported him for suspected abuse based upon his request for an IDEA evaluation and multiple reports of disability-related bullying of his daughter. According to district records, the parent reacted angrily to a classmate's mother taking some candid photos, "burst" into district offices in an aggressive manner and interrupted another child's IEP meeting in the school library to yell at the principal. The principal and psychologist were worried that the parent's angry and paranoid behavior, displayed at the school numerous times, was causing undue anxiety for the child, as evidenced by her cowering on the floor during the library incident. While the parent's multiple complaints may have been a factor in the decision to contact child welfare, they were not the deciding factor.

RESTRAINT/SECLUSION IN SCHOOLS

A. Domingo v. Kowalski, 64 IDELR 47 (N.D. Ohio 2014). In case brought under Section 1983 for damages, the teacher's alleged conduct, as described by a one-on-one aide, did not meet the "conscience-shocking" standard required by the 6th Circuit Court of Appeals. Parents must show that the force applied by the teacher caused severe injury, was disproportionate to the need presented, and was inspired by malice or sadism as opposed to an unwise excess of zeal. An educator's questionable conduct typically fails to meet this standard if it was undertaken for disciplinary or other pedagogical reasons. Here, the teacher's purported conduct, which included restraint and gagging a 9 year-old to prevent him from spitting; belting an 11 year-old to the toilet to address her balance issues; and having a 6 year-old "potty train" behind a screen in the classroom while eating lunch, all had some educational purpose. In addition, the fact that none of the children appeared to have suffered physical or psychological injuries indicate that the teacher's conduct did not rise to conscience-shocking levels.

B. Schiffbauer v. Schmidt, 65 IDELR 100 (D. Md. 2015). Action alleging hostile educational environment under Section 504 and ADA is dismissed where school district was not shown to be deliberately indifferent to disability harassment by a classroom aide who had restrained a student with ADHD, OCD and a mood disorder on one occasion after he tried to attack a classmate on the playground. To establish deliberate indifference, parents must show that the alleged disability harassment was so severe or pervasive that it altered the condition of the student's education or created an abusive learning environment. In addition, parents must show that the district had actual knowledge of such disability-based harassment and was deliberately indifferent to it. Here, though the parents stated that they believed the aide abused their son on several occasions, their complaint identified only a single incident of restraint. While an allegation of harassment by a staff member "significantly raises the potential severity and pervasiveness of the

interaction," the brief duration of the incident at issue shows that the student was not subjected to a hostile educational environment.

CHILD FIND/EVALUATIONS

A. Jana K. v. Annville Cleona Sch. Dist., 63 IDELR 278, 39 F.Supp.3d 584 (M.D. Pa. 2014). The parent's failure to notify the district that a physician had diagnosed his daughter with depression did not excuse the district's failure to conduct an IDEA evaluation. The duty to conduct an evaluation exists regardless of whether a parent requests an evaluation or shares information about a private assessment. Here, the district had sufficient information to suspect that the student had an emotional disturbance and might be in need of special education services. The student had poor relationships with peers and a tendency to report inoffensive conduct as "bullying;" she visited the school nurse on at least 54 occasions for injuries, hunger; anxiety or a need for "moral support;" the student's grades, which has been poor to average in previous school years, plummeted when she began 7th grade; and the district was aware of at least one on-campus act of self-harm where she swallowed a metal instrument after using it to cut herself. This "mosaic of evidence" clearly portrayed a student who was in need of a special education evaluation.

B. Memorandum to State Directors of Special Education, 65 IDELR 181 (OSEP 2015). High cognition is not, in itself, a bar to eligibility under the IDEA and OSEP is concerned that some districts are refraining from evaluating students with disabilities because they have high cognition. As OSAEP said in 2013 in Letter to Delisle, districts may not use cut-off scores as the sole basis for determining the eligibility of a student with high cognition who may qualify on the basis of SLD. Eligibility determinations must be made using a variety of assessment tools and strategies and may not rely on any single measure or assessment as the sole criterion for the decision. OSEP is continuing to receive letters from those working with children with disabilities, particularly those with ED or mental illness, indicating that some districts may be resisting conducting an initial evaluation on the basis of the student's high cognitive skills. State Directors are asked to disseminate Letter to Delisle to district and remind them of the obligation to evaluate all children, regardless of cognitive skills, who are suspected of having one of the 13 disabilities outlined in the IDEA.

C. A.W. v. Middletown Area Sch. Dist., 65 IDELR 16 (M.D. Pa. 2015). District's delay in comprehensively evaluating teenager with an anxiety disorder is a denial of FAPE and entitles the student to compensatory education. The IDEA requires districts to conduct a "full and individual" initial evaluation of a student who is suspected of having a disability and districts must use a variety of assessment tools and strategies to gather relevant information about the student's functional, developmental and academic needs. Here, the district sought parental consent only to conduct a psychiatric evaluation of the student. The evaluation information did not include information from which the district could develop a

positive behavior plan or IEP goals or to rule out SLD. From the outset, the district knew that the psychiatric evaluation would not address educational matters and should have known that it would need to conduct additional assessments to determine the full scope of the student's needs. In addition, the district did not convene the IEP team until 13 months after it first had reason to suspect that the student had a qualifying disability and the student went without appropriate services in the interim.

D. C.C. v. Beaumont Indep. Sch. Dist., 65 IDELR 109 (E.D. Tex. 2015) (unpublished). A district has a duty to evaluate under the IDEA when it has reason to suspect that a child has a disability and may be in need of special education services. Here, the district had reason to suspect the need to evaluate a 3 year-old when his mother, a district diagnostician, played an audio recording of her son's speech for the district's SLP. Based upon the mother's conversations with the SLP, the district had notice of the child's disability by his third birthday on January 25, 2013. In addition, the district's policy of not evaluating any child that is not enrolled in its programs violates the IDEA and likely contributed to the delay here. If the district had evaluated the child in a timely fashion, he would have received services approximately 30 days earlier. Thus, the hearing officer's award of compensatory speech services is affirmed.

E. E.F. v. Newport Mesa Unif. Sch. Dist., 65 IDELR 265 (C.D. Cal. 2015). Based upon the nonverbal child's difficulty understanding basic linguistic concepts as a preschooler and difficulties in using the Picture Exchange Communication System, picture cards and sentence strips, the district had no reason to believe the child was ready to use high-tech communication devices and needed an AT evaluation. However, the district should have assessed the child's AT needs when his parents reported in February 2012 that he was using a tablet at home with great success as a kindergartner. The district waited until November of 2012 to evaluate and January 2013 to provide services. The ALJ's award of 20-minute AT therapy sessions, totaling 400 minutes of compensatory education, was sufficient to remedy the IDEA violation in light of the AT services provided in subsequent IEPs.

ELIGIBILITY

A. Doe v. Cape Elizabeth Sch. Dept., 64 IDELR 242 (D. Me. 2014). The former SLD student's performance on three privately administered tests was not enough to show that the student continued to be eligible for IDEA services. The student's above-average grades, her performance on state-mandated standardized tests, and the results of the district's reevaluation supported the district's conclusion that the student was no longer eligible for special education. The parents' argument that the district should have focused on the student's unusually low scores on the independent assessments is rejected where federal and state LD guidelines expressly require the team to consider the student's good grades and solid performance on statewide assessments. Further, the team did not rely solely

upon academic performance and also considered the results of the district's psychological and academic evaluations, teacher observations and parent feedback. In addition, the district reconvened the team to discuss the results of the independent evaluations and explained why it afforded them little weight.

B. D.A. v. Meridian Jt. Sch. Dist. No. 2, 65 IDELR 286 (9th Cir. 2015) (unpublished). The district did not err in finding that the student was not eligible for services under the IDEA. High schooler's Asperger syndrome does not have an adverse effect on his educational performance (which in Idaho includes academic areas such as reading, math and communication, as well as nonacademic areas such as daily living skills, mobility and social skills). Although the parents allege that the district focused too much on academic performance, the hearing officer and district court noted that the student had done well in classes that emphasized pre-vocational and life skills.

C. Department of Educ. v. Patrick P., 65 IDELR 285 (9th Cir. 2015) (unpublished). The ED did not err in finding the student ineligible for IDEA services. A child needs to satisfy to sets of criteria in order to receive services as an SLD student: first, the child must demonstrate either inadequate achievement or severe discrepancy between achievement and ability. Second, the child must demonstrate either insufficient progress or a pattern of strength or weaknesses in performance consistent with SLD. The student here failed to meet the first criteria, as the student performed well in the classroom, was engaged in his classes and received good grades. Further, the student was only receiving Tier I accommodations that were available to all students attending his private school, regardless of their disability status. The district court's decision is affirmed reversing the administrative hearing order in the parents' favor.

D. Q.W. v. Board of Educ. of Fayette Co., 64 IDELR 308 (E.D. Ky. 2015). District's finding that the student no longer requires IDEA services is upheld. The student's alleged difficulties at home do not require the district to continue providing special education services. Under the IDEA, a student with autism is not eligible for special education and related services, unless his disability adversely affects his educational performance. The ordinary meaning of "educational performance" requires courts and hearing officers to focus on school-based evaluation. Here, the student did not appear to exhibit any academic, behavioral or social difficulties at school. Rather, his teachers testified that he earned good grades, participated in class, exhibited the same level of emotion as his peers and was "a joy" to have in class. While "educational performance" may extend beyond grades to the classroom experience as a whole, it does not include behaviors exhibited solely in the home. "Social and behavioral deficits will be considered only insofar as they interfere with a student's education."

E. H.M. v. Weakley Co. Bd. of Educ., 65 IDELR 68 (W.D. Tenn. 2015). An ALJ's ruling that the frequently truant high schooler was "socially maladjusted" did not

mean that the student was not IDEA-eligible. The student's lengthy history of severe major depression coexists with her bad conduct and qualifies her as an ED child. Social maladjustment does not in itself make a student ineligible under the IDEA. Rather, the IDEA regulations provide that the term "emotional disturbance" does not apply to children with social maladjustment unless they also meet one of the five criteria for ED. Since age 9, this student has been diagnosed with severe major depression and later medical and educational evaluations stated that she had post-traumatic stress disorder in addition to a recurrent pattern of disruptive and negative attention-seeking behaviors. Further, the depression was marked, had lasted a long time and affected her performance at school. Thus, it is "more likely than not" that her major depression, not just misconduct and manipulation, underlie her difficulties at school. Thus, the hearing officer's decision finding her ineligible under the IDEA is reversed.

F. In the Matter of P.T., 65 IDELR 273 (N.Y. 2015) (unpublished). Even if a 5th grader developed an emotional disturbance based upon peer bullying, the lack of impact on the student's academic performance supports the district's determination that the student is not eligible under the IDEA. Having an emotional disturbance, such as anxiety or depression, will not in itself qualify a child for IDEA services. Parents must also show that the condition has an adverse impact on educational performance. Here, the student consistently earned good grades and received average to above-average scores on intelligence tests. Assuming that the student's mental and emotional state did rise to the level of emotional disturbance, the SRO was correct to find that it did not affect the student's educational performance. Thus, the parents are not entitled to reimbursement for a parochial school placement.

REEVALUATION

A. West-Linn Wilsonville Sch. Dist. v. Student, 63 IDELR 251 (D. Ore. 2014). School district should have re-evaluated a student's behavioral needs and convene an IEP meeting before changing his educational placement. When the student began punching, shoving and using threatening gestures during his third-grade year, the district should have evaluated the student rather than discontinuing his participation in a mainstream music class, removing him from an inclusion PE class with others in his self-contained autism program and delivering his one-to-one instruction in a room next to the principal's office. Clearly, the district had notice of the need for a reevaluation by April 6, 2011, when the principal informed the director of student services that the special education teacher felt unsafe around the child. Although the district argued that it was merely implementing short-term solutions to accommodate the child until the end of the school year, its response "essentially turned the reevaluation process on its head." Thus, the district is ordered to reevaluate the student, convene an IEP meeting and identify an appropriate placement for the upcoming school year. The ALJ's award of tuition reimbursement, however, is denied based upon the parents' failure to provide the 10-day notice of private school placement to the district and

their lack of cooperation with the district's efforts to develop an IEP for the child's 4th grade year.

B. S.D. v. Portland Pub. Schs., 64 IDELR 74 (D. Me. 2014). School district must fund private school tuition for a 6th grader with a variety of reading and anxiety disorders based upon its failure to reevaluate the student. When the student's IEP team drafted his IEP, it was with the understanding that he was reading at level 7 in the Wilson Reading System. However, the student's new Wilson-certified instructor discovered early in the school year that the student was actually reading at a level 2. This discovery should have triggered a reevaluation of the student's IEP, rather than simply to continue instruction at a lower level. The district's failure to determine whether the student's decline stemmed from his previous teacher's failure to follow the Wilson program, a memory retention deficit, flawed proficiency assessments or some other reason amounted to a denial of FAPE.

C. Phyllene W. v. Huntsville City Bd. of Educ., 64 IDELR 242 (N.D. Ala. 2014). While parents are not generally required to request needed IDEA evaluations, where an IEP team, during reevaluation, reviews all data and determines that no additional data are needed to determine the student's special education needs, the district is not required to conduct any formal assessments unless the parent asks that it do so. Here, the 10th grade SLD student's IEP team considered classroom performance, teacher feedback and parent input when determining that no additional data were needed as part of reevaluation. Although the student had some difficulty on a statewide assessment, she was proficient in grade-level standards and had mastered her IEP goals from the previous school year. In addition, the hearing officer noted that the parent had not requested any new evaluations and did not express any other needs or concerns during the IEP meeting. Because the district had no reason to suspect the student had unidentified special education needs, it did not violate the IDEA by failing to conduct additional assessments.

D. Brock v. New York City Dept. of Educ., 65 IDELR 135 (S.D. N.Y. 2015). Existing evaluative data did not support the IEP team's recommendation that the student be placed in a public 12:1+1 public school program. The failure to conduct a reevaluation in the previous six years resulted in substantive harm, as the district's reliance upon information from the student's private school was misplaced. Not only did the student's progress reports use broad grading criteria and "rudimentary grading differentials," the private school's data did not include any educational testing or standardized assessments that supported the district's proposed change in placement. Thus, these were insufficient substitutes for the mandatory triennial reevaluation where the existing data did not indicate how the student might perform in a public school setting. Where the district did not challenge the appropriateness of the private placement or argue that the equities in the case would preclude reimbursement for the private placement, the district is ordered to reimburse the mother and grandmother for private school tuition costs.

INDEPENDENT EDUCATIONAL EVALUATIONS (IEEs)

A. Jeffries v. City of Chicago Sch. Dist. #299, 63 IDELR 280 (N.D. Ill. 2014). Where a parent may request an IEE at public expense if she disagrees with a district evaluation, this parent was not entitled to an IEE where she went ahead and arranged for an independent evaluation without requesting one first when the district had failed to conduct an evaluation.

B. Letter to Savit, 64 IDELR 250 (OSEP 2014). It would be in conflict with the IDEA for a school district to have a policy granting third-party evaluators less time to observe students as part of an evaluation than they provide to district evaluators. Thus, it would be inconsistent with IDEA for a district to have a policy limiting evaluators to a two-hour observation window, unless the district also limits its own evaluators to a two-hour observation period. However, observations of a class or proposed placement by parent attorneys and lay advocates are not an entitlement and can be restricted by state or local policy.

C. Letter to Baus, 65 IDELR 81 (OSEP 2015). If a parent disagrees with a district's evaluation based upon the district's failure to assess the child in a specific area of need, the parent has the right to request an IEE at public expense in that area to determine whether the child has a disability and the nature and extent of the special education and related services the child needs. At that point, the district is required to either request a due process hearing to show that its evaluation is appropriate or provide the requested IEE at its expense.

D. B. v. Orleans Parish Sch. Dist., 64 IDELR 301 (E.D. La. 2015). The parents' noncompliance with the IEE guidelines the district provided justify the district's refusal to reimburse the parents for their IEE. A publicly funded IEE is subject to the same criteria that a district uses for its own evaluations. Because the district here applied the criteria set forth in the State Department's "Bulletin 1508," the IEE needed to follow those same requirements. When the district granted the request for an IEE, it informed the parents that the evaluation had to comply with Bulletin 1508 and told them how to access the criteria online. However, the psychologist who assessed the student failed to follow applicable criteria, and the district indicated 7 specific areas in which the IEE did not comply with the requirements for evaluations of SLD. Similarly, the district notified the parents of 6 deficiencies in the portion of the IEE that addressed the student's OT and 6 more in the area of PT needs. Indeed, the psychologist did not contact the district about the identified areas of noncompliance despite being advised to do so. Thus, the ALJ's decision that the parents were not entitled to reimbursement is upheld.

PROCEDURAL SAFEGUARDS/VIOLATIONS

A. M.M. v. Lafayette Sch. Dist., 64 IDELR 31 (9th Cir. 2014). District committed a procedural violation that denied FAPE when it did not share over a year's worth

of RTI data with the child's parents during the eligibility meeting, even though it does not use the RTI model for determining LD eligibility. The duty to share RTI data does not apply only when a district uses an RTI model to determine a student's IDEA eligibility. This procedural violation was not harmless where the other members of the IEP team were familiar with the RTI data but the parents were not and, therefore, did not have complete information about their child's needs. "Without the RTI data, the parents were struggling to decipher his unique deficits, unaware of the extent to which he was not meaningfully benefitting from the [initial offer of special education services], and thus unable to properly advocate for changes to his IEP."

B. Marcus I. v. Dept. of Educ., 63 IDELR 245 (9th Cir. 2014) (unpublished). Even though the ED's prior written notice of proposed placement lacked specificity, it did not impede the parents' participation in the IEP process. Where the written notice provided vaguely for placement in the "public high school in his home community," the IEP meeting was held at the high school that the parent's other children attended, included staff who worked only at the school, and the team discussed how to implement the student's IEP at the high school. In addition, the student's transition teacher testified that concerns for the student's safety were discussed because the campus was not fully fenced and the student had attempted to run away from his private school on one occasion. Because the IEP team discussions indicated the intent to educate the student in the school that his siblings attended, the failure to include more detail in the notice was a harmless procedural error.

C. R.L. v. Miami-Dade Co. Sch. Bd., 63 IDELR 182, 757 F.3d 1173 (11th Cir. 2014). To avoid a finding of predetermination of placement, a school district must show that it came to the IEP meeting with an open mind and that it was "receptive and responsive" to the parents' position at all stages. While some district team members seemed ready to discuss a small setting within the public high school as requested by the parents, the LEA Representative running the meeting "cut this conversation short" and told the parents that they would have to pursue mediation if they disagreed with the district's placement offer at the Senior High School. "This absolute dismissal of the parents' views falls short of what the IDEA demands from states charged with educating children with special needs."

D. L.M.P. v. School Bd. of Broward Co., 64 IDELR 66 (S.D. Fla. 2014). A school district employee's statement at a meeting over 10 years ago that the school district did not provide ABA therapy as an intervention service suggests that the district predetermined IEPs that were proposed for 3-year-old triplets with autism. Thus, the parents' action seeking money damages under Section 504 may proceed where an inference could be made that it was aware of its obligations but acted with "deliberate indifference to the appropriateness of the education a child will receive as a result of the IEP process when no consideration is given to the options other than predetermined ones." In addition, the parents' IDEA claims

may proceed, as the court needs more information about the nature of ABA therapy.

E. Gore v. District of Columbia, 64 IDELR 41, 67 F. Supp.3d 147 (D. D.C. 2014). The district did not violate the IDEA when it transferred an SLD teenager from one private special education school to another without consulting her guardian. The guardian had no right to participate in the decision, since it was only a change of location of services and did not result in a fundamental change to or elimination of a basic element of the student's program. Although the new school offered only a 10-month program, as opposed to the 11-month program at the former school, the student's IEP did not include ESY services, so the slight decrease in the length of school year did not deprive the student of instruction or services to which he was otherwise entitled. In addition, because both schools serve only students with disabilities, she would have the same level of access to nondisabled peers during the school day.

F. Williams v. Milwaukee Pub. Schs., 64 IDELR 237 (E.D. Wis. 2014). School district did not fail to provide parent notice of her child's transfer to a new school, based upon an email confirming that the parents received a copy of the student's IEP. Clearly, the parents received a copy of the new IEP, which included a placement notice, seven weeks before the previous school began its fall semester and the parents' argument that the lack of notice caused their daughter frustration and embarrassment when she was turned away from her previous school on its first day. Even if the parents had not received the notice, they still could not demonstrate a denial of FAPE, because the IEP called for the student to attend the new school starting weeks later than the previous school, so the alleged failure to communicate the change did not cause the student to miss a single day of school. The parents are responsible for any embarrassment their daughter might have experienced, as the student testified that her mother told her to go to the previous school on the first day to "see what was going to happen." The district provided sufficient notice of the new placement.

G. D.B. v. Santa Monica-Malibu Unif. Sch. Dist., 65 IDELR 224 (9th Cir. 2015). District's exclusion of parents from an IEP meeting constituted a denial of FAPE to the deaf teenager. The unavailability of certain IEP team members during the summer did not justify the district's decision to go ahead with the meeting in the parents' absence and after they had asked for it to be rescheduled for a date when they would be available. An agency can make a decision without the parents only if it is unable to obtain their participation, which was not the case here. Where the district claimed that it needed to hold the meeting because the current school year was ending, the IDEA only requires the district to have an IEP in effect at the start of the school year. Thus, the failure to review and revised the student's IEP before the beginning of summer break would not cause the district to run afoul of another procedural requirement. The parents' attendance at the meeting takes priority over the attendance of other team members.

H. D.N. v. New York City Dept. of Educ., 65 IDELR 34 (S.D. N.Y. 2015). Parent's claim that the district predetermined placement is rejected. The IEP meeting minutes, along with testimony from district team members reflect that the district properly considered parental input during the IEP meeting. A parent cannot prevail on a predetermination claim when the record shows that she had a meaningful opportunity to participate in educational decision-making. Here, the testimony by the school psychologist reflected that the parent actively contributed to the development of the IEP and that the team modified some provisions of it in response to her input. For example, the parent had expressed concerns that her child required a 12-month program with greater support than a 6:1:1 staffing ratio. In response, the team included a recommendation for a 12-month program in a 6:1:1 class with the extra support of a one-to-one paraprofessional in the student's IEP. Further, the IEP meeting minutes expressly state that the parent was "asked explicitly" if she agreed with the proposed IEP goals or wanted to add any provisions to the IEP.

I. A.G. v. State of Hawaii, 65 IDELR 267 (D. Haw. 2015). Parents' argument that the district's reference to the workplace-readiness program in the 14-year-old's draft IEP reflected predetermination of placement is rejected. Rather, the parents had the opportunity to express their concerns at the IEP meeting, including their desire for the student to spend part of the school day with nondisabled peers and to attend college. The district members of the IEP team reviewed the results of a recent assessment indicating that the student performed well below average academically and scored in the first percentile for cognitive functioning. In addition, the team modified the draft IEP in response to the parents' input, adding speech-language objectives and progress-monitoring requirements. There was no dispute that the IEP team discussed placement in the workplace-readiness program and attempted to address parental concerns at the IEP meeting. Further, the evaluative data supports the recommended placement in that program.

J. L.M. v. Downington Area Sch. Dist., 65 IDELR 124 (E.D. Pa. 2015). Magistrate affirms hearing officer's decision in favor of the district where the proposed IEP offered FAPE to the student. An email that included a district comment to the parent about "trying" to return the student to public school from a private setting when seeking permission to conduct an evaluation did not show that the district predetermined placement. Rather, the statement reflected the district's obligation to educate the student in the LRE. Although the parents argued that the proposed IEP was drafted, reviewed, revised and finalized prior to the IEP meeting, "[t]he district cannot be faulted for conferring, thinking, and developing proposed ideas and options prior to the IEP meeting as long as a meaningful IEP meeting was subsequently conducted, as here." The parents' clearly stated intent from the beginning of the reevaluation process was to keep the student in the private facility and, although the concept of "predetermination" applies only to districts and is not a two-way street, the parents behaved inequitably, albeit in a manner that they believed was protecting their child's best interest. The parents' request for a Due Process Hearing just days after their receipt of the reevaluation report,

before an IEP was created and a NOREP offered, was unreasonable. Although the parents ultimately participated in an IEP meeting, and the student visited the high school, there is no credible evidence that the family seriously entertained the prospect of accepting the district's proposed program and placement. "When [t]he parents have become so singularly focused on the [private school in which they have already enrolled their child] that they appear unwilling to consider the District's proposals in good faith," tuition reimbursement should be denied ... Similarly, "Where the parents have predetermined that they will place their child in a private school regardless of the district's ability to program for the child, the equities favor the District."

K. John and Maureen M. v. Cumberland Pub. Sch., 65 IDELR 231 (D. R.I. 2015). District did not violate the IDEA when it denied the parent's request to observe her second-grader in the special education classroom. The IDEA does not give parents or their representatives the right to review current or prospective placements, although OSEP has encouraged districts to give parents an opportunity to do so. Here, the district offered the mother an alternative to her request, which would have allowed her to observe the classroom when no other children were in attendance.

IEP CONTENT/IMPLEMENTATION

A. Jefferson Co. Bd. of Educ. v. Lolita S., 64 IDELR 34 (11th Cir. 2014) (unpublished). District court's decision that the school district's use of "stock" goals and services with respect to reading and postsecondary transition planning constituted a denial of FAPE is upheld. Given that the LD teenager was reading at a first-grade level when he entered the 9th grade, a reading goal based on the state standard for 9th-graders failed to address the student's unique needs. Clearly, the IEP team had no evidence that the student's reading comprehension had increased by 8 grade levels since the prior school year. Nor did the district offer any services to address the gap between the student's performance and 9th grade standards. In addition, the student's name had been handwritten on several pages of the IEP above the name of another student, which had been crossed out. This was an "apparent use of boilerplate IEPs," which was to blame for the inappropriate goal. In addition, the district failed to conduct transition assessments and, instead, developed a transition plan with a goal calling for the student to participate in postsecondary education, which did not account for his placement on an occupational diploma track.

B. M.S. v. Utah Sch. for the Deaf and Blind, 64 IDELR 11 (D. Utah 2014). Inconsistencies in communication system used with a deaf-blind teenager with autism, along with the teacher's decision to discontinue the use of a classroom FM system listed in the student's IEP constituted a material implementation failure and denial of FAPE. Because the nonverbal student had associated specific objects with specific activities, such as a spoon to signify "lunchtime," the change in objects interfered with the student's ability to communicate and

receive information. As for the teacher's unilateral decision to cease the use of the FM system, questions as to whether it benefited the student had no bearing on the fact that the student's IEP required its use. "While some deference should be given to teachers, the IEP is created by a team of individuals with various areas of expertise and requires the classroom teacher to implement the components, even the ones that the teacher may not agree with or care to implement." Based upon the student's regression in the area of communication skills attributable to the implementation failures, the school is to provide the student with compensatory education.

C. Grasmick v. Matanuska Susitna Borough Sch. Dist., 64 IDELR 68 (D. Alaska 2014). Hearing officer's order that prohibits parents from continuing to interfere with the district's attempt to provide an in-home program for student with a progressive neuromuscular disease is affirmed. School personnel serving the student (special education teacher, AT specialist, PT, VI provider, etc.) all testified that the mother treated them in an angry, agitated and emotional manner while they were trying to work with her child. She would bar certain providers from the home and verbally harass and threaten them. Thus, the hearing officer's order that the parents cooperate with the delivery of in-home services by the district while looking for another location is reasonable.

D. B.P. v. New York City Dept. of Educ., 64 IDELR 199 (S.D. N.Y. 2014). When viewed in isolation, the 16 annual IEP goals for a student with autism, ADHD and other disabilities were not measurable because they did not identify the specific measure to be used but, instead, cross-referenced certain short-term objectives. However, the detailed short-term objectives included enough detail for school staff to evaluate the student's progress. For example, an objective supporting the student's sensory processing goal called for him to take a break after a verbal cue from an adult in 4 out of 5 opportunities when his environment was overwhelming him. In addition, the short-term objectives appear sufficiently tailored to the annual goals and are intended to support their achievement. The IEP also listed short-term and annual goals relating to the student's visual and spatial needs, such as copying a teacher's design using pattern blocks and making a plan and mapping out a community outing.

E. Kimi R. v. Department of Educ., 65 IDELR 12 (D. Haw. 2015). Hearing officer's determination that the district offered FAPE to a 13-year-old with Rett's disorder is affirmed. Although the student's present levels of academic achievement and functional performance referenced the student's "articulation difficulties," the district did not deny FAPE by failing to develop articulation goals and objectives. This is so because, according to the district's SLP, the student had the same cognitive abilities as a 2-year-old child and articulation difficulties were commensurate with her limited cognitive abilities. The SLP explained that although the student may manifest articulation issues, there were precursor speech-language issues--namely cognitive ones--that should be addressed. Thus, the court would not second guess the IEP team's decision to

adopt the SLP's view of the student's articulation difficulties. The IEP team did develop goals and objectives to address all other speech-language issues identified.

F. Morgan M. v. Penn Manor Sch. Dist., 64 IDELR 309 (E.D. Pa. 2015). The part of the hearing officer's order that awarded compensatory education is vacated, as its analysis ignores the content of the student's IEP. The district's failure to use the term "autistic support" in the first grader's IEP should not have been the basis for awarding compensatory education, as the IEP included a full range of services designed to meet the student's identified needs in the areas of empathetic social, sensory processing, behavioral and receptive communication skills. The hearing officer, therefore, erred in focusing on the lack of the IEP's inclusion of a specific term rather than the actual content of the IEP and the services listed in it.

G. Tyler J. v. Department of Educ., 65 IDELR 45 (D. Haw. 2015). The charter school's receipt of the student's IEP during the second week of school was not a "material implementation failure" that constitutes a denial of FAPE. There must be more than a minor discrepancy between the services that the LEA provides and those required by the student's IEP for it to be a material implementation failure. Here, the parents did not show that the delay in the school's receipt of the IEP impeded the student's educational progress. The evidence showed that charter school staff was familiar with the contents of the student's IEP on the first day of school, but the first few days were devoted to orientation and community building. The school was, in fact, implementing the IEP within days of the beginning of the school year.

H. Letter to Kane, 65 IDELR 303 (OSEP 2015). Where an LEA is found to be unable or unwilling to provide FAPE to children with disabilities within its jurisdiction, the SEA must directly fund special education services for a child or group of children after a factual determination has been made that the LEA is unable to provide FAPE. IDEA regulations require SEAs to use payments that would otherwise go to the LEA to provide special education and related services directly. Once it has been determined that the LEA is unable or unwilling to provide FAPE, the SEA would be required to take the necessary action to ensure compliance.

THE FAPE STANDARD

A. Sneitzer v. Iowa Dept. of Educ., 115 LRP 36295 (8th Cir. 2015). Parent failed to establish a denial of FAPE for a gifted sophomore with Asperger syndrome. While her primary difficulties were following directions, understanding social rules and behavioral expectations and responding appropriately and respectfully to peers and adults, she excelled in her general education classes. The student's improved attendance after an off-campus rape and her 4.024 GPA suggested that her IEP provided some educational benefit to her. Although grades are not dispositive, this kind of case where the goals in the IEP are non-academic in

nature, the student's academic progress further undermines the contention that she was not receiving educational benefit when she was removed from the district by her mother. The district worked closely with the student's medical team and implemented its recommended accommodations following the rape. In addition, the parent and her witnesses testified at the hearing that the student could return to school. It appeared that the mother's decision to withdraw her stemmed from the student's failure to be chosen for the varsity show choir as opposed to lack of appropriate special education services. Absent evidence that the student needed to participate in varsity show choir to receive FAPE, the parent is not entitled to recover the cost of the student's out-of-state private placement.

RELATED SERVICES

A. R.A.G. v. Buffalo City Sch. Dist. Bd. of Educ., 63 IDELR 152 (2d Cir. 2014) (unpublished). District may not use the IDEA's exhaustion requirement to shield itself from a class action lawsuit challenging its alleged policy of delaying the provision of related services until the third week of the school year. The systemic nature of the alleged violations of IDEA and 504 allows the parent to seek relief on behalf of all affected students and an exception to the exhaustion requirement exists when the parent alleges "broad system violations."

B. Oconee Co. Sch. Dist. v. A.B., 65 IDELR 297 (M.D. Ga. 2015). District is ordered to provide an appropriately trained aide on the bus for a teenager with a seizure disorder who might need access to Diastat within five minutes of the onset of a seizure. Where the district contended an aide was not needed because the student was always within five minutes of home or school, the district's director of transportation acknowledged that traffic and weather conditions could affect the provision of timely emergency treatment. The ALJ's conclusion that this variable presents an unacceptable risk to the student is upheld. In ordering an aide, the ALJ struck a balance between the district's interest in obtaining more information from the student's neurologist and the student's interest in receiving his medication as soon as possible after his seizure reached 5 minutes.

C. DeKalb Co. Bd. of Educ. v. Manifold, 65 IDELR 268 (N.D. Ala. 2015). Hearing officer's decision that deaf high schooler needs CART services in order to receive FAPE is upheld. The hearing officer relied on reports by two independent assistive technology experts in finding that the district could not provide the basic floor of opportunity without CART. The reports of the AT experts who observed the student in school stated that the student missed approximately 60 percent of classroom instruction when using the district's FM system, which did not always work properly. It is especially persuasive that both experts brought to observe were in agreement with the parents than an IEP without CART or another speech-to-text method was not providing her with sufficient access to lectures, discussions and classroom materials. In addition, the student's grades improved substantially when the district provided CART services midway through her 9th grade year and dropped when the IEP team decided to discontinue CART for 10th

grade. Thus, the evaluators' reports and the student's classroom performance with and without CART demonstrated an educational need for speech-to-text technology.

DISCIPLINE/MANIFESTATION

A. Avila v. Spokane Sch. Dist., 64 IDELR 171 (E.D. Wash. 2014). While the parents are correct that a district can conduct a manifestation determination at any time a student exhibits inappropriate behaviors, the district here did not violate the IDEA by failing to consider the relationship between the student's conduct for which he was suspended and his autism. This is so because the 6 days of suspension over two school years did not form a pattern of removals that required a manifestation determination. This is required only when a student is removed for disciplinary reasons from his/her current placement for more than 10 school days in the same school year. In addition, the district provided the parents with prior written notice of its refusal to conduct a MD, explaining that it was not required from removals of less than 10 school days.

B. Held v. Northshore Sch. Dist., 64 IDELR 162 (W.D. Wash. 2014). Parents' claim that district discriminated against 8th grader with ADD by giving him a Saturday detention and not punishing all students involved is rejected. While the student's claim was that he became anxious and lost control of his bladder after another child turned off the lights in the bathroom, the other child told the district's investigator that the student had been urinating on the floor before he turned off the lights and continued to do so after the lights came back on. Other witnesses confirmed the story. In addition, 504 and ADA were not violated for failing to implement the student's 504 Plan, because even if staff members failed to provide some services, their oversight did not demonstrate deliberate indifference or support the parents' claim for money damages.

C. Z.H. v. Lewisville Indep. Sch. Dist., 65 IDELR 147 (E.D. Tex. 2015). The district's determination that the student's creation of a list of schoolmates he wanted to shoot was not a manifestation of his disability is upheld. While the district had evaluated the student for Asperger's the previous school year at his parents' request, the school psychologist determined that no further assessment was necessary based upon the student's extremely sociable nature and good sense of humor. The MDR team did discuss a PDD-NOS diagnosis by the student's pediatrician issued five days after the discovery of the shooting list and offered to complete an autism evaluation, but the parents would not consent to it. After the school psychologist explained why further autism testing had not been done the previous year, the team limited its review to the student's ADHD and depression. While the student's ADHD caused him to act impulsively, the shooting list was developed over several days and was not the result of his ADHD. In addition, the parents could not identify any evidence in the record linking the creation of the list to the student's depression. Thus, the district's determination that the behavior was not a manifestation of disability is upheld.

D. C.C. v. Hurst-Euless-Bedford Indep. Sch. Dist., 65 IDELR 195 (N.D. Tex. 2015). The fact that juvenile authorities decided not to prosecute the student for photographing another student on the toilet was not relevant to the school district's decision to place the student in an interim alternative educational setting for 60 days. The district had found that the behavior was not a manifestation of the student's ADHD and SLD, so the student was subject to the same discipline policies and procedures as the general student population. The Texas Education Code calls for such a placement for such conduct and it did not matter that the criminal authorities decided not to prosecute the student for the conduct.

DANGEROUS STUDENTS

A. Wayne-Westland Comm. Schs. v. V.S., 64 IDELR 139 (E.D. Mich. 2014) and 65 IDELR 15 (E.D. Mich. 2015). District's motion for an injunction temporarily prohibiting a teenager with a disability from entering the high school grounds is granted where an administrator's statement indicates that the student has become physically violent on multiple occasions. A court may, in appropriate situations, temporarily enjoin a dangerous student from attending school when the student poses an immediate threat to the safety of others, Here, the district's complaint showed that the 6-foot, 250-pound student kicked, punched and spit on students and staff; threatened to rape a female staff member; and threatened to stab two staff with a pen. After the IEP team reduced the student's attendance to one hour a day, the student attacked the school's security liaison. When told to leave the school building, the student tried to force his way back into the building and four staff members were required to hold the school doors shut to keep him out. Since then, the student had also threatened to bring guns to school, made racist comments to staff, and punched the school's director in the face. Thus, the district may temporarily educate the student through an online charter school program. NOTE: On February 4, 2015, the court granted a permanent injunction barring the student from entering any premises owned by the district or attending school events. The district was able to prove all four factors required to obtain permanent relief: 1) that it would suffer irreparable harm; 2) the remedies available at law are inadequate to compensate for that harm; 3) the balance of hardships tip in its favor; and 4) the injunction would not be against public interest. This is so because of the student's history of physical violence that demonstrated an "extreme risk" of imminent and irreparable injury. Remedies such as money damages would be inadequate to address any injuries to others resulting from the student's conduct and schoolmates and staff would suffer a far greater injury than the student, who can continue his education through an online program. Protecting the safety of others is in the public's interest.

B. Seashore Charter Schs. v. E.B., 64 IDELR 44 (S.D. Tex. 2014). District's motion to change the autistic student's stay-put placement from a K-8 charter school to a special education program in the student's neighborhood high school pending the outcome of the due process hearing brought by the parent is granted. Given the

charter school's unsuccessful efforts to hire a special education teacher after the previous one resigned, the school was no longer capable of addressing the student's aggressive behaviors. In contrast, the local high school was "ready, willing and able" to implement a program for the student with age-appropriate peers and post-secondary transition services. In addition, the student was substantially larger than his classmates and had a tendency to hit, bite, scratch and pull hair, even when accompanied by a teacher or aide. Thus, his continued presence at the charter school created a dangerous situation and a substantial risk of harm to others. Thus, it is ordered that he not return to the charter school and remain in the high school's self-contained program until the hearing officer issues a decision in the due process case.

C. Troy Sch. Dist. v. K.M., 64 IDELR 303 (E.D. Mich. 2015). District's request for a temporary restraining order is denied where it was not shown that the district would suffer irreparable harm or imminent injury if the teenager returned to his public high school. The IDEA's stay-put provision requires that a student remain in his then-current educational placement during any pending administrative proceedings. While a court can authorize a change in placement when a student engages in violent or dangerous behavior, it cannot do so unless the district shows that maintaining the student in his current placement is substantially likely to result in injury to the student or others. Here, the district did not meet that burden where the incident that resulted in the student's most recent suspension occurred in the absence of the "safe person" required by his IEP and no serious injuries were recorded. Thus, the student is not substantially likely to injure himself or others if the district implements his IEP. NOTE: In a subsequent case regarding placement for the student and appealing a hearing officer decision, the court upheld the parent's challenge to the district's proposed placement in a center-based program for children with ED. Based upon testimony from psychologists and autism experts, the student could have made educational progress in a general education setting. While the student has had multiple behavioral incidents in mainstream classes, several of which resulted in emergency evacuations or police intervention, the experts testified that the student was on "high alert" because he was so fearful during the school day—"Police involvement, restraints and seclusion can be frightening for any student, but more so for a student with disabilities." According to the psychologists and autism experts, the student is highly intelligent, learns quickly, has a strong work ethic and wants to be successful. In addition, experts have opined that he needs to interact with nondisabled peers to acquire social and behavioral skills and that he could benefit from a mainstream class if provided appropriate support services. Thus, the ALJ's decision that the district denied FAPE is upheld and the order requiring the district to provide a one-to-one psychologist with autism training as the student's "safe person" is clearly permissible under the IDEA. 65 IDELR 91 (E.D. Mich. 2015).

STUDENTS IN JUVENILE JUSTICE/CORRECTIONAL FACILITIES

A. Dear Colleague Letter, 64 IDELR 249 (OSEP/OSERS 2014). Absent a specific exception in the law, all IDEA protections apply to students with disabilities in correctional institutions. This includes the IDEA's child-find duty, such that agencies cannot assume that a student who enters jail or a juvenile justice facility is not a student with a disability just because he or she has not been previously identified. School districts should work with individuals who are most likely to come into contact with students in the juvenile justice system to identify students suspected of having a disability and ensure that a timely referral for evaluation is made. While it is acknowledged that child-find and proper identification of students in correctional facilities is complicated by the fact that they often transfer in and out, the evaluation process must continue once the parent's consent for evaluation has been obtained, even if the student will not be in the facility long enough to complete the process. In addition, if a student is transferred to a correctional facility in the same school year after the previous district has begun but not completed an evaluation, both agencies must coordinate assessments to ensure the evaluation is completed in a timely manner. Finally, the IDEA's disciplinary safeguards also apply to these students, including the right to a manifestation determination upon 11 days of a disciplinary exclusion. "These disciplinary protections apply regardless of whether a student is subject to discipline in the facility or removed to restricted settings, such as confinement to the student's cell or living quarters or 'lockdown' units."

B. Dear Colleague Letter, 114 LRP 51901 (OCR 2014). Residential juvenile justice facilities, as federal fund recipients, are no less responsible for providing FAPE in a discrimination-free environment than are public schools. Thus, they must abide by federal laws, such as Section 504 and Title II of the ADA when disciplining, evaluating, placing and responding to alleged harassment of students with disabilities. All public schools, including those in juvenile justice facilities, are obligated to avoid and redress discrimination in the administration of school discipline. As a result, they must ensure that they comply with provisions governing the disciplinary removal of students for misconduct causes by, or related to, a student's disability. In addition, state and local facilities must implement reasonable modifications to their polices, practices, or procedures to ensure that youth with disabilities are not placed in solitary confinement or other restrictive security programs because of their disability-related behaviors. In addition, residents of such facilities must be educated with nondisabled students to the maximum extent appropriate in compliance with Section 504's LRE mandate.

C. Buckley v. State Correctional Institution-Pine Grove, 65 IDELR 127 (M.D. Pa. 2015). State prison erred in discontinuing special education services to an incarcerated teenager with ED and the provision of "self-study packets" to be completed in the student's cell denied FAPE. As allowed by the IDEA, the public agency was able to show that the prison had a bona fide security interest that

would allow them to modify the student's IEP where the student's prison record reflected four instances of assault and approximately 25 other incidents of serious misconduct. However, the official comments to the 1999 IDEA regulations state that the IEP team must consider possible accommodations for an incarcerated student who poses a security risk. Here, the prison did not convene the student's IEP team and instead enforced a policy requiring all eligible inmates in its restrictive housing unit to study in their cells. Further, the right to modify the IEP of an incarcerated student who cannot otherwise be accommodated does not allow a public agency to discontinue IDEA services altogether. An education program should be revised, not annulled, in light of safety considerations. Thus, the student is awarded a full day of compensatory education for each school day that he was placed in the prison's restrictive housing unit.

METHODOLOGY

A. A.S. v. New York City Dept. of Educ., 63 IDELR 246 (2d Cir. 2014) (unpublished). Parents are not entitled to reimbursement for placement of their autistic child in a learning center for children with autism that employs ABA. The parents' claim that the "overwhelming testimony" at the IEP meeting and due process hearing showed that the student would not benefit from the TEACCH methodology is rejected where the school district's witness testified that TEACCH was an appropriate instructional method for the student. While the parents may prefer that their child attend an ABA-based program, there was no evidence that ABA was required for the student to receive educational benefit. Thus, the court will defer to the district's choice of educational methodology.

B. R.B. v. New York City Dept. of Educ., 64 IDELR 126 (2d Cir. 2014) (unpublished). Where IEP did not expressly require teachers and other service providers to use the Developmental, Individual Difference, Relationship-based (DIR or "Floortime") Model, it did not deny FAPE. Where the parents were unable to show that particular methodology was necessary for the student to learn, the failure to identify a specific methodology was not an IDEA violation. In fact, the record showed that the student had made progress while attending an ABA program. Thus, the district court's denial of reimbursement for the parents' unilateral placement of their son in a private school for autistic students is affirmed.

C. Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools, 64 IDELR 180 (OCR, OSERS and DOJ 2014). For some students with hearing, vision or speech impairments, the provision of FAPE under the IDEA may not be sufficient under Title II of the ADA. The ADA requires districts to take appropriate steps to ensure that communication with students with disabilities is as effective as communication with students without disabilities. 28 C.F.R. 35.160(a)(1). To comply with ADA, districts must provide auxiliary aids and services so that students with disabilities have an equal opportunity to participate

in and enjoy the benefits of the district's services, programs and activities. Moreover, districts must give primary consideration to the auxiliary aid or service requested by the student when determining what is appropriate for that student. The IDEA merely requires the provision of special education and related services individually designed to provide the student with meaningful educational benefit and, in some instances, the provision of IDEA FAPE may also meet the Title II effective communication standard for a particular student. However, in other cases, the district may be required to provide the student with auxiliary aids or services that are not required under the IDEA. "[I]f the special education and related services provided under the IDEA are not sufficient to ensure that communication with the student is as effective as communication with other persons, the Title II obligations have not been met." If an IEP team is delegated the responsibility to make this decision, it needs to be aware that the decision regarding auxiliary aids and services needed to ensure effective communication presents a different question than the FAPE determination under the IDEA.

D. I.S. v. School Town of Munster, 64 IDELR 40 (N.D. Ind. 2014). While districts generally have no obligation to specify a particular methodology in a student's IEP, where a particular one is inappropriate, the district must take steps to ensure that it is excluded from possible instructional techniques. Here, the Read 180 methodology had proved to be highly ineffective for the dyslexic student the previous school year and the district's possible continuation of it made the IEP substantively inappropriate. Because the IEP failed to specify an appropriate methodology or exclude the Read 180 program, which would have produced no benefit, it was not tailored to his unique needs or likely to produce progress instead of regression. The IEP was written in a way that would allow for the use of Read 180 which did not address the student's most significant needs in the areas of decoding and encoding.

E. W.D. v. Watchung Hills Regional High Sch. Bd. of Educ., 65 IDELR 63 (3d Cir. 2015) (unpublished). The IEP team did not violate the parent's procedural safeguards by failing to answer his specific questions about educational methodologies and personnel qualifications. This is so because the IDEA does not require IEPs to include such information. In addition, the team provided adequate information by informing the parent that the reading program that would be used was a research-based program and would be taught by a certified special education teacher.

F. Dear Colleague Letter, 115 LRP 33911 (OSEP 2015). Based upon concerns being heard "in the field," including the fact that SLPs may be left out of the loop when determining eligibility for students with ASD, educational agencies are reminded that ABA therapy is just one methodology that may be appropriate for a child with autism. Part C and Part B require IEP teams to determine a child's services based on the child's unique needs, and evaluations conducted under Part C must include assessment of the child's needs in several areas, including communication, physical and adaptive development. Under Part B, districts must

ensure that evaluators assess children in all areas of related to the suspected disability, including, if appropriate, health, vision, hearing, social/emotional status, general intelligence, academic performance, communicative status and motor abilities. The objective of the evaluation and IEP development process is for the IEP team to create a program tailored to the specific child's needs. That cannot occur if key service providers are not involved and services are restricted to a particular methodology. "We recognize that ABA therapy is just one methodology used to address the needs of children with ASD and remind States and local programs to ensure that decisions regarding services are made based on the unique needs of each individual child."

PRIVATE SCHOOL/RESIDENTIAL PLACEMENT

A. Blount Co. Bd. of Educ. v. Bowens, 63 IDELR 243 (11th Cir. 2014). District court's decision is affirmed upholding tuition reimbursement to parents for private preschool placement for an autistic student. The district's characterization of the private placement as a unilateral placement by the parents is rejected because the district included the private program in the child's ultimate IEP and, therefore, effectively approved the program as the child's educational placement. The district could have avoided this issue if it had offered the child an appropriate placement in the first place, instead of waiting for the parent to act.

B. Reyes v. New York City Dept. of Educ., 63 IDELR 244 (2d Cir. 2014). Where student's IEP provided teenager with autism with a one-to-one paraprofessional for the first three months of the school year to help him transition from a private school that he had attended since 2007, it was inadequate to meet the student's needs. This is so, even though there was an "understanding" to revisit the student's continued need for a one-to-one para later in the school year. "If the school district were permitted to rely on the possibility of subsequent modifications to defend the IEP as originally drafted, then it could defeat any challenge to any IEP by hypothesizing about what amendments could have taken place over the course of a year. The IDEA's tuition reimbursement system cannot function as intended unless parents have a clear understanding of the services their children will receive throughout the school year. Thus, courts may not consider the possibility of mid-year amendments when deciding the appropriateness of an IEP in a private school reimbursement action.

C. K.S. v. Summit Bd. of Educ., 63 IDELR 253 (D. N.J. 2014). Parents who did not properly give 10 days' written notice of their intent to seek public funding for a private placement are not entitled to reimbursement for that placement. The law requires this notice and that parents express their concerns about the district's IEP at the last team meeting before they remove the student from public school. Here, the parent contacted the special education director and expressed their concerns verbally. However, to allow parents to substitute oral for written notice would "completely 'vitiate the writing requirement' set forth by the plain language" of the law. Further, the parents signed the IEP after having an amicable meeting

with the IEP team and visiting the therapeutic day school proposed as the student's placement.

D. M.C. v. Starr, 64 IDELR 273 (D. Md. 2014). A district is not required to fund a parental residential placement unless the parent can show that the student requires it to make educational progress. Although the parents maintained that their teenager struggled in all aspects of her life, the evaluative data indicated only that she required a therapeutic setting, which was offered by the district's proposed day school placement. In addition, the student does not require a residential setting to learn social, behavioral or life skills, which were the purported benefits of the parental placement at the boarding school. While the day school proposed did require students to transition between classes, the student transitioned between classes at the boarding school without difficulty. Further, the proposed day school offered transition supports such as escorts, maps and teachers in the hallways. Although she will be required to make several more transitions a day at the day school, ample services are available to help her with this process. Thus, the district's offer of FAPE precludes the parents from recovering $119,000 in boarding school tuition.

E. Leggett v. Dist. of Columbia, 65 IDELR 251 (D.C. Cir. 2015). Due to the district's delay in developing an initial IEP and the fact that the high schooler with SLD, anxiety and depression would have gone without special education services for the first month of the 2012-13 school year, the parents' unilateral placement in a boarding school was educationally necessary. The student's progress at the school shows the appropriateness of the residential placement and entitles her mother to reimbursement for it. This is not a case where the parent placed a child in a residential facility to address medical, emotional or behavioral issues that are entirely separate from the child's learning. Rather, the purpose of the placement was "primarily educational." However, the parent might not be able to recover the costs of activities unrelated to the student's education, such as horseback riding. The district court's decision in the district's favor is reversed and remanded to determine what expenses were educationally necessary.

F. Fort Bend Indep. Sch. Dist. v. Douglas A., 64 IDELR 1 (5th Cir. 2015) (unpublished). Reimbursement to parents for placement of their child in a $7,000-per-month residential treatment facility is reversed. When determining whether a residential placement is appropriate, the court will determine 1) whether the parents placed the student in the facility for educational reasons; and 2) whether the facility evaluates the student's progress primarily by educational achievement. Here, there was no evidence that the parents placed their son in the facility for educational purposes versus his emotional and mental health needs. Further, the facility's founder "expressly disclaimed" that education was the primary purpose of the facility. Rather, the founder testified that a student's discharge from the facility is based upon progress made with respect to Reactive Attachment Disorder and not educational achievement. The parents' notion that educational progress made as a result of receiving mental health treatment makes

the placement appropriate is rejected. "[M]easuring progress by success in treating the underlying condition, on the theory that such progress will eventually yield educational benefits as well, is insufficient." Because the placement was not appropriate, the court will not consider whether the district offered FAPE.

G. Sam K. v. State of Hawaii Dept. of Educ., 65 IDELR 222, 788 F.3d 1033 (9th Cir. 2015). Although the parents did not file their action for private school funding without the ED's agreement or consent within 180 days of the student's continued placement as required by Hawaii law, this was not a unilateral placement since the student was placed at the private school via a settlement agreement that provided that the Hawaii ED would fund it through the 2009-10 school year. Because the Hawaii ED did not propose a new placement for the student until well into the second semester of the 2010-11 school year, the parents are entitled to a full year's worth of funding for the private school due to the ED's silence on a new placement. Agreement to continue the placement may be tacit when a party remains silent or fails to act. Thus, the ED gave its unspoken consent to continuing the placement when it failed to develop an IEP for the student by the beginning of the 2010-11 school year. The Hawaii law only applies to unilateral placements by parents without the consent of the ED and under these circumstances, this was not a "unilateral" placement. Thus, the October 2011 request for due process by the parents was timely.

H. Matthew D. v. Avon Grove Sch. Dist., 65 IDELR 291 (E.D. Pa. 2015). Parents' request for private school reimbursement is denied based upon the 4th-grader's ongoing struggles with reading and math after spending more than three years in the private school. The private school failed to confer a meaningful educational benefit where it spent most of its time trying to control the student's severe behavioral problems. As a result, the student received little academic instruction despite his significant deficits in reading and math. It was not until the parents received and shared with the school the results of an IEE conducted during the Summer of 2010 that the school understood the severity of the student's needs and began providing focused reading instruction. The student functions between a pre-k and 1st grade level academically and is unable to read age-appropriate material. In addition, the school did not record data about the frequency, duration and intensity of the student's behaviors or implement a behavioral plan. The hearing officer's decision that the parents are not entitled to tuition reimbursement is, therefore, affirmed.

I. S.W. v. New York City Dept. of Educ., 65 IDELR 70 (S.D. N.Y. 2015). SRO's order denying private school reimbursement to parents of SLD student is affirmed. While a student's IEP must be reasonably calculated to provide educational benefit, a district must also ensure that it educates the student with his nondisabled peers to the maximum extent appropriate. Here, the SRO properly held that the student could succeed in a co-taught classroom and did not require a small class environment, as his parents asserted, based upon poor attention and slow processing speed. According to a recent evaluation, the student had superior

abilities in verbal reasoning and high average abilities in perceptual reasoning. Progress reports and test scores also showed that he met grade-level standards in most subject areas and exceeded them in social and emotional functioning. In addition, several staff members testified that placement in a special education class would be way too restrictive and that the student did not need that level of intervention. Thus, a more restrictive environment was not necessary for FAPE and his parents are not entitled to reimbursement for their unilateral private school placement.

J. York Sch. Dept. v. S.Z., 65 IDELR 39 (D. Me. 2015). The district's failure to provide more intensive language-based instruction denied SLD student FAPE and entitles parents to recover tuition for two years of placement at a private special education boarding school. Although the student earned passing grades in all of his classes while in the public school program, his math teacher admitted that the student's class participation grade offset his poor performance on quizzes and tests. In addition, the special education director testified that she was unfamiliar with teacher grading procedures and was unaware of whether they modified grades for students with IEPs. This supports a finding that the district lacks "hard-and-fast" standards for assigning grades and, therefore, undercuts their evidentiary significance. An independent psychoeducational evaluation identifies the student's need for small classes and language-based learning instruction, and the district's SLP's classroom observations showed that the student was unable to process information, had significant organizational difficulties and was not engaged. Thus, the district's offer to continue the existing level of services is a denial of FAPE.

TRANSFER STUDENTS

A. S.C. v. Palo Alto Unif. Sch. Dist., 63 IDELR 124 (N.D. Cal. 2014). IDEA's stay-put provision takes precedent over the rules governing services for students with disabilities who transfer when a due process hearing is pending regarding the IEP in the new district. Where student moved in with an IEP calling for a home-based ABA program, the district must implement the home-based program for the duration of the parties' dispute. This is based upon the 9th Circuit's 2003 decision in Ms. S. v. Vashon Island Sch. Dist. holding that where a parent and a district disagree about the appropriate educational placement for a transfer student, the new district must adopt a plan that approximates the student's last-implemented IEP "as closely as possible." Although subsequent revisions to the IDEA set forth specific obligations regarding transfer students, the statutory duty to provide "comparable" services to those in the last-implemented IEP addresses transfer students in general, not ones where proceedings are pending and stay-put applies. Thus, the district must provide 21 hours of services per week in the student's home while proceedings are pending.

B. N.B. v. State of Hawaii, 63 IDELR 216 (D. Haw. 2014). The ED had no obligation to provide FAPE until the parent enrolled the child in the public school

system. Although there was an alleged telephone conversation that the parent had with the ED's student services coordinator while the family was in the process of relocating from Texas, the phone inquiry was not enough to trigger a duty to provide FAPE. The parent argued that the coordinator did not inform her of the new district's duty to provide comparable services while evaluating the transfer student, so placed the student in a private school out of concern about having the student wait for services during a 60-day evaluation. It is enrollment, however, and not a phone inquiry, that triggers implementation of the IEP in a new school district and where this parent never enrolled the child in the public school or provided the ED with a copy of the child's IEP, the district did not violate the IDEA.

STAY-PUT

A. N.W. v. Boone Co. Bd. of Educ., 63 IDELR 275 (6th Cir. 2014). A parental private placement ultimately funded by the district through the summer of 2011 via a settlement agreement is not the "stay-put" placement when the parents initiated a due process hearing to challenge the school district's proposed placement after the summer of 2011. This is so, because the stay-put placement is the last-agreed upon placement and requires the approval of the school district via the IEP team process.

B. Sheils v. Pennsbury Sch. Dist., 64 IDELR 294 (E.D. Pa. 2015). The mother's agreement with the ruling of the administrative hearing officer constituted sufficient "agreement" to the stay-put in order to modify the current placement. The father, who shared legal custody with the mother, argued that the IDEA regulation's use of the word "parents" prevents a district from modifying a student's placement unless both parents agree to the proposed change. Where the purpose of the stay-put provision is to strip districts of the unilateral authority to modify a student's placement, it was not intended to prevent a change in placement when a parent agrees with the hearing officer and the district that a placement change is appropriate. In addition, OSERS used the singular form of "parent" in its official comments to the regulations in 2006. Further, the father's interpretation that consent of both parents is required could have negative and unintended consequences, requiring a student to remain in an inappropriate placement simply because one parent opposed the view of the other parent, the district and the hearing officer. Thus, the father's motion to stay the decision of the hearing officer is denied. In addition, stay-put does not prevent the district from conducting an FBA.

C. Jalen Z. v. School Dist. of Philadelphia, 65 IDELR 198 (E.D. Pa. 2015). Although the school district played no role in developing an autistic preschooler's early intervention IEP providing for in-home Lovaas programming, the preschool IEP, funded by the Pennsylvania DOE is the child's "then-current educational placement" for purposes of stay-put. The hearing officer was incorrect in denying the private Lovaas program as the pendency program and, therefore, the district is

responsible for reimbursing the parent for the child's home-based program during the pendency of the proceedings.

EXTENDED SCHOOL YEAR SERVICES

A. Grants Pass Sch. Dist., 65 IDELR 207 (D. Ore. 2015). ALJ's order that the district provide 360 minutes per day of ESY services to a 15 year-old student with autism is reversed. The district's regression and recoupment data justified the IEP team's decision that the student did not need ESY services in order to receive FAPE. The ALJ's reliance on the parents' expert testimony was misplaced, because the collection and analysis of educational data is a question of methodology and the district was free to use any method that allowed the student to receive FAPE. While the data collection and analysis methods proposed by the parents' experts might have been better than those used by the district, there is no authority requiring the district to use those methods. The parents did not produce any evidence that the district's data collection methods were inadequate. Further, the data that the district collected before and after the winter and spring breaks supported the team's decision that the student did not require ESY services to prevent "undue" regression—the standard set forth in Oregon's special education rules.

LEAST RESTRICTIVE ENVIRONMENT

A. H.L. v. Downington Area Sch. Dist., 65 IDELR 223 (3d Cir. 2015) (unpublished). The district denied FAPE in the LRE to a 4th-grader with SLD when deciding that she could not receive reading and writing instruction in the general education classroom. The first step in the LRE analysis is determining whether the student can be educated satisfactorily in the general education setting with the use of supplementary aids and services. Here, there is little evidence to support the district's decision that the student required pull-out services in language arts for 90 minutes per day. The IEP and the placement notice only vaguely stated that the district considered a full-time general education placement and rejected that option as being inadequate to meet the student's needs. There was no evidence in the record as to how the district actually approached the LRE issue and only limited evidence in the supplemented record of options that might have been available. There is no documentation that discussion of this issue at all. Thus, the district's proposed placement could not be assessed in the absence of that evidence.

B. H.G. v. Upper Dublin Sch. Dist., 65 IDELR 123 (E.D. Pa. 2015). Where testimony indicated that sixth-grade student with Fragile X syndrome had difficulty understanding the most basic work in reading and math supports the district's proposal to place him in a special education setting for both subjects. In determining a student's LRE, two factors are considered: 1) whether the district could educate the student in a general education classroom with supplementary aids and services; and 2) if not, whether the district mainstreamed the student to

the maximum extent appropriate. With respect to the first factor, the student's teachers attempted various modifications, accommodations, aids and supports, many of which were unsuccessful. The math teacher testified that the student struggled with the most basic concepts and frequently became so frustrated that he had to leave the classroom. According to his language arts teacher, he would hold his books upside down and take scribbled notes to be part of the class. Even the parents' witnesses underscored how the student would benefit in a segregated setting when recommending a smaller, more supportive classroom environment. The student also engaged in loud and disruptive behaviors such as calling out and flapping his hands. In light of these factors, a general education placement is not appropriate for math or science. The fact that the district offered a general education placement for the rest of the day indicates that the district mainstreamed the student to the maximum extent appropriate.

ONE-TO-ONE AIDES

A. Lainey C. v. Department of Educ., 65 IDELR 32 (9th Cir. 2015) (unpublished). District court's decision that a one-to-one aide was not necessary for 5th grader with autism is upheld. The district court's reliance upon the testimony of a behavioral specialist--who opined that an aide would not necessarily assist the student with socialization and that it might lead to the student becoming more socially isolated and less independent—was appropriate. Given the potential drawbacks of providing a one-to-one aide, it was not unreasonable for the IEP team to recommend that the district first try a social skills group and autism consultation services.

HOSPITAL/HOMEBOUND SERVICES

A. Cupertino Union Sch. Dist. v. K.A., 64 IDELR 275 (N.D. Cal. 2014). The medical notes provided by the parents asking the district to excuse a 10 year-old boy's absences based upon seizures were not sufficient for the district to grant the parent's request for homebound services. California regulations provide that an IEP team cannot recommend home instruction unless the team has a medical report from a physician, surgeon or psychiatrist that identifies a diagnosed condition, certifies that the severity of the condition precludes instruction in a less restrictive setting, and includes a projected calendar date for the student's return to school. Here, neither of the notes supplied by the parent contained this information. The first note from the student's treating physician asked that the student be excused for a 9-day seizure-related absence and stated that he could return to school the following week if his condition improved. The next note with an unreadable signature on it stated similarly that the student had been hospitalized for two days and could return to school when his parents wanted him to do so. Without a compliant doctor's note, the IEP team could not legally recommend home-hospital instruction.

COMPENSATORY EDUCATION

A. Kelsey v. District of Columbia, 65 IDELR 92 (D. D.C. 2015). Student's complaint that the hearing officer underestimated the amount of compensatory speech-language services is rejected. The hearing officer conducted a "qualitative, fact-intensive inquiry" when calculating the student's award of 96 hours of compensatory education, which must provide a student with the educational benefits she would have received had the district provided FAPE. A compensatory award cannot be the result of a "cookie cutter approach" that presumes that each hour without FAPE entitles the student to one hour of compensatory instruction. Here, the hearing officer's decision to award the student 1.5 hours of speech-language services for each of the 64 hours she missed was properly based upon "a thorough and reasonable analysis of the evidence," that included relevant evaluations, educational records and witness testimony. The student's position that the hearing officer discounted expert testimony recommending more services to get her to the 7th grade level is rejected, as the hearing officer did accept that testimony but also considered other factors that affected her learning, including her "dismal" attendance record. Thus, the award of compensatory services was reasonable.

ATTORNEY CONDUCT AND ATTORNEYS' FEES

A. A.L. v. Jackson Co. Sch. Bd., 64 IDELR 173 (N.D. Fla. 2014). In fully affirming an ALJ's 191-page decision that the district provided FAPE to the student at issue, the court further noted that counsel for the parent and student was "extremely ineffective" in her representation. Although the attorney claims to have a disability, the court had already given her more than adequate accommodations for her disabilities through both physical accommodations and generous extensions of time. According to the court, the only accommodation that would apparently satisfy her was an indefinite extension of time for all filings, "but no lawyer would ever be entitled to such a request." The court noted that the attorney's failure to file motions and responses by an unambiguous deadline despite very generous extensions of time appeared to indicate a failure to comply with Fl. St. Bar. R. 4-1.1 ("A lawyer shall provide competent representation to a client."), and Fl. St. Bar. R. 4-1.16 ("A lawyer ... shall withdraw from the representation of a client if ... the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."). The court also "sternly" warned the attorney that "if she ever again appears before me without associating co-counsel who are fully able to competently represent her clients, I will not tolerate her failure to comply with the Florida Rules of Professional Conduct and may recommend discipline against her pursuant to N.D. Fla. Loc. R. 11.1(E)(5), including prohibition from practice before this court."

B. Horen v. Board of Educ. of the City of Toledo Pub. Sch. Dist., 63 IDELR 290 (N.D. Ohio 2014). In connection with the most recent lawsuit brought by the parents, the full amount of fees sought by the prevailing school district--

$32,792—is both reasonable and necessary to deter further filings by the parents. Rule 11 of the Federal Rules of Civil Procedure authorizes sanctions against any attorney who pursues a case that is frivolous, baseless or unreasonable or pursues a claim for an improper purpose, such as harassment or increasing litigation costs. This student's parent—a licensed attorney—filed at least three cases that the court dismissed on the grounds that it had already considered and denied the same claims. In addition, the court had already warned of the possibility of sanctions twice and had already sanctioned the parents for $1,000. The parents' decision to continue their case despite the string of adverse rulings entitles the district to recover its fees incurred to defend a 2013 IDEA action. This sizeable award is "the only potentially effective way" to deter further litigation.

C. L.R. v. Hollister Sch. Dist., 63 IDELR 8 (N.D. Cal. 2014). Parents were not justified in refusing the district's settlement offer and, therefore, could only recover fees incurred through the date of the settlement offer (which decreases their award by over $50,000). In addition, due to their limited success at the hearing, their fees will be further reduced by 50%. Here, the district's offer revealed its willingness to hold subsequent, procedurally correct, IEP meetings after it had held two meetings without inviting a regular education teacher. The settlement offer addressed the district's past procedural violations and included 75 hours of compensatory education and reasonable fees, which was far more reasonable than the 46 hours of social skills training awarded by the ALJ.

D. Blackman v. District of Columbia, 64 IDELR 3 (D. D.C. 2014). Given the complexity of the case, the novelty of the legal issues and the implications that the decision will have on all D.C. charter schools, it was not unreasonable for the parent to have a team of 12 attorneys and one paralegal. However, the billings for several attorneys were excessive and unwarranted (where multiple attorneys attended hearings and conferences and worked on the same legal issues, etc.). Thus, a 36% reduction in the fees is warranted and the district will pay a total of $321,355 instead of $504,492.61.

E. Meridian Joint Sch. Dist. No. 2 v. D.A., 65 IDELR 253 (9th Cir. 2015). Under the IDEA, only parents of "a child with a disability," as defined by the IDEA, may use the statute's fee-shifting provision to recover attorney fees. The plain language of the IDEA permits an award of fees only "to a prevailing party who is the parent of a child with a disability." A plain-language interpretation of this provision would not thwart the statute's purposes and is not inconsistent with the provision of FAPE. Instead, it preserves public resources for those most in need of services. Thus, even though relief was granted to the parents in the form of funding for an IEE, the child was ultimately found ineligible. Thus, the district court's fee award to the parents is vacated.

F. McAllister v. Dist. of Columbia, 65 IDELR 284 (D.C. Cir. 2015). Parents are not entitled to recover $423,757 for their expert consultant's work on their case, as documentation indicates that the consultant described herself as an "expert," and

did not perform the same type of tasks as a law firm's paralegal. The Supreme Court ruled in 2006 that the IDEA does not permit the recovery of expert witness fees. Here, the consultant's resume describes her as an "independent special education advocate/expert" and lists "expert testimony" as one of her core competencies. It says nothing about legal training or paralegal experience and her billing records showed that her work did not involve making phone calls, maintaining files, preparing correspondence, or other tasks traditionally performed by paralegals. Instead, the consultant spent time on substantive special education tasks, such as reviewing evaluation reports, participating in IEP meetings and testifying in due process hearings.

G. C.W. v. Capistrano Unif. Sch. Dist., 65 IDELR 31, 784 F.3d 1237 (9th Cir. 2015). For a district to recover fees based upon a claim that a parent's lawsuit is frivolous, a claim is not frivolous unless the result is obvious or the arguments are wholly without merit. Here, the ALJ carefully reviewed the parent's arguments under IDEA related to the appropriateness of the district's OT evaluation, and did not indicate that these claims were frivolous. Instead, the ALJ's careful analysis, findings of fact and conclusions of law indicate the seriousness of the parent's claims. Similarly, the reviewing district court carefully considered the parent's claim that the district retaliated against her in violation of Section 504 by threatening to seek sanctions if she appealed the ALJ's decision. However, when the parent refiled her ADA Title II and Section 1983 claims, despite the district court's previous dismissal of them as groundless, this could be considered frivolous and the case is therefore referred to the Appellate Commission for further proceedings on those claims.

H. Brittany O. v. Bentonville Sch. Dist., 64 IDELR 299 (E.D. Ark. 2015). The 90-day timeframe for administrative appeals of a due process hearing decision also applies to fee claims under the IDEA. Because the IDEA does not contain an express limitations period for fee claims, courts hearing such claims borrow the limitations period from the most analogous state statute. Federal courts are divided as to whether a longer or shorter limitations period should apply to fee claims, and courts that consider a fee claim to be an independent action rather than a petition for review apply statutes of limitations for independent actions. Others regard fee claims to be ancillary actions that are subject to the limitations period for administrative appeals. The parents' request to apply Arkansas' three-year statute of limitations for personal injury claims is rejected, as the 90-day timeframe for administrative appeals is more appropriate. Adopting this limitations period will avoid piecemeal litigation and ensure that all claims related to a due process hearing will be brought in a single action.

I. Turton v. Virginia Dept. of Educ., 64 IDELR 305 (E.D. Va. 2015). School attorney's motion for sanctions is granted based upon the lack of legal and factual support for the parent attorneys' claims against district counsel. The Federal Rules of Civil Procedure allow courts to sanction an attorney who files a claim for an improper purpose, asserts claims or defenses that are not supported by existing

law (or a reasonable extension of it), or makes statements of fact that have no evidentiary support. Here, the parent attorneys offered no legal support for their claim that the school districts' counsel violated duties that he owed to parents of students with disabilities. Further, case law clearly shows that the school attorney's sole duty is to the districts he represents. In addition, the complaint incorrectly identified the school attorney as counsel for all four districts involved in the case. Had the parent attorneys researched the case before filing, they would have known that the school attorney represented only two of the four districts they accused of violating special education laws. Thus, the parties must confer and provide information that will help the court determine appropriate sanctions against the parent attorneys.

J. E.C. v. School Dist. of Philadelphia, 65 IDELR 33 (E.D. Pa. 2015). The IDEA does not allow courts to reduce a district's liability for attorney's fees based upon financial hardship or the school district's inability to pay. The fact that the district has been designated as a "distressed" LEA does not support a reduction in fees. However, the district's request to deduct $7,421 in expert witness fees based upon the parents' failure to show that those fees were reasonable is granted but the court will not decide whether expert fees can be recovered under Section 504 or the ADA when the parents primarily seek relief under the IDEA.

SERVICE ANIMALS

A. Frequently Asked Questions about Service Animals and ADA, (DOJ 7/20/15), www.ada.gov/regs2010/service_animal_qa.pdf. This document presents FAQs that are helpful to schools in considering the creation or review and revision of policies and procedures relative to service animal requests.

B. Fry v. Napolean Comm. Schs., 65 IDELR 221, 788 F.3d 622 (6th Cir. 2015). Parents may not pursue their 504/ADA claims against the student's former district until they exhaust their IDEA administrative remedies. If the IDEA's administrative procedures can provide some form of relief or if the claims relate to the provision of FAPE, then exhaustion is required. Here, the parents were clearly disputing the appropriateness of the student's IDEA services, arguing that the presence of the service dog would allow the student to be more independent so that she would not have to rely upon a one-to-one aide for toileting assistance and retrieval of dropped items. They also maintained that the student needed the dog in school so that she could form a stronger bond with the dog and feel more confident. These allegations bring the case squarely within the scope of the IDEA. Developing a bond with the dog that would allow the student to function more independently outside the classroom is an educational goal, just as learning to read Braille or learning to operate an automated wheelchair would be. Thus, the parents are required to exhaust their administrative remedies. [Note: The dissenting judge opined that the wish to use a service dog at school had no relationship to the student's education and exhaustion should not have been required].

C. Alboniga v. School Bd. of Broward Co., 65 IDELR 7 (S.D. Fla. 2015). The ADA regulation stating that public entities are not responsible for the "care and supervision" of service animals does not justify the district's insistence on having a 6-year-old boy's parent provide a handler for his service dog. The district's failure to provide an employee to assist the child with the dog's routine care amounts to a failure to accommodate. In the vast majority of cases, permitting the use of a service animal is a reasonable accommodation. The fact that the child's teachers and paraprofessionals were able to detect and address his seizures has no bearing on the parent's desire to have the seizure-alert dog present in the classroom. "[R]efusing [the parent's] requested accommodation if it is reasonable in favor of one the [district] prefers is akin to allowing the public entity to dictate the type of services a [person with a disability] needs in contravention of that person's own decision's regarding his own life and care." The district's argument that providing an employee to help the child walk the dog would amount to care and supervision is rejected. The parent is not asking the district to walk the animal; rather, she wants an employee to accompany her son outside so that he can take care of the dog. This requested assistance is no different from having an employee help a child with diabetes use an insulin pump or help a blind child to deploy a white cane. "[The district] is being asked to accommodate [the child], not to accommodate, or care for, [the dog]." Thus, the district is ordered to provide the assistance the child requires to provide his service animal with routine care such as feeding, watering, and walking. It is also enjoined from requiring the parent to maintain additional liability insurance for the dog and from requiring that the parent obtain vaccinations in excess of those required by Florida law.

SECTION 504/ADA ISSUES GENERALLY

A. T.F. v. Fox Chapel Area Sch. Dist., 64 IDELR 61 (3d Cir. 2014) (unpublished). School district's failure to include requested items in 504 Plan for student with severe tree nut allergy is not a denial of FAPE or discrimination under Section 504 that entitles her parents to private school tuition reimbursement. Although district members of the 504 team declined to include many of the accommodations sought by the parents, the district explained that the district's policies regarding food allergy procedures already required those accommodations. The parents' proposed plan was 19 pages long and the district declined to reiterate the substance of its general food allergy policy in this student's 504 plan for the "simple reason" that a 504 plan related to food allergies must be accessible and understandable in the event of an emergency. Further, the district had trained teachers and other staff members to recognize the symptoms of anaphylaxis and to administer epinephrine. Thus, the district's failure to incorporate all of those details into the 504 plan did not violate the law.

B. K.K. v. Pittsburgh Pub. Schs., 64 IDELR 62 (3d Cir. 2014) (unpublished). While not perfect, the district's efforts to accommodate a 12th-grader with gastroparesis did not constitute a denial of FAPE. Though staff members were confused about

who was responsible for monitoring the student's 504 Plan and were unaware that she was spending portions of each day in the school library instead of attending classes, the district took reasonable steps to accommodate the student so she could continue participating in its advance studies program. For instance, the district offered increasingly significant modifications to address the student's medical and mental health needs and offered to provide mental health services and evaluate her for IDEA eligibility. Almost every interaction between the parents and school administrators resulted in express steps being taken with the goals of addressing challenges presented by the student's "difficult and unusual circumstances."

C. R.K. v. Board of Educ. of Scott Co., 64 IDELR 5 (E.D. Ky. 2014). School district did not discriminate against a kindergartner with Type 1 diabetes when it assigned the child to an elementary school with a full-time nurse on staff instead of training nonmedical personnel at his neighborhood school to help administer insulin and count carbohydrates. Section 504 only entitles disabled students to reasonable accommodations, not the best possible accommodations. Thus, while the district must make efforts to accommodate a child who is otherwise unable to access its programs, it does not have to modify an existing one solely to allow the child to attend his neighborhood school. The child's 504 team considered whether the district could train nonmedical personnel to help the child manage his diabetes, but based on the medical records and discussions with the parents, determined that the child required a placement in a school with a full-time nurse. The parents' wish for the child to attend school with his friends did not make the placement decision unreasonable. They have not shown that the child's educational opportunities were different, that there were transportation difficulties or that the child was somehow negatively impacted by having a nurse administer his diabetes treatment rather than a trained layperson.

D. T.L. v. Sherwood Charter Sch., 64 IDELR 233 (D. Ore. 2014). A single incident wherein the diabetic student refused to eat his entire lunch is not sufficient to demonstrate discrimination under Section 504 or the ADA. The school's review of the student's diabetes protocol, along with its investigation of the incident and a follow-up discussion with the parent showed that the school did not deliberately refuse to accommodate the student's diabetes. Although lunchroom monitors failed to ensure that the student ate his entire lunch one day, resulting in a drop in the student's blood sugar, the school principal promptly met with the monitors and reminded them of their supervisory duties under the student's plan. In addition, the school nurse spoke with the student and learned that the incident resulted from a misunderstanding about his right to bring food to certain locations on campus and encouraged him to advocate for himself if he needed to finish his lunch and made sure that he knew that he could do that. The nurse also reviewed the student's diabetes protocol with all relevant personnel and the student had no further issues with eating his lunch. Further, the incident did not have any serious medical or educational consequences.

E. K.P. v. City of Chicago Sch. Dist. #299, 65 IDELR 42 (N.D. Ill. 2015). School district is not required to allow SLD student to use a hand-held calculator on a district-wide math assessment that would affect her right to take an entrance exam for one of its competitive high schools. The fundamental unfairness to nondisabled students, as well as the strong likelihood that the test scores would be invalidated, requires the denial of the requested accommodation under the ADA. An accommodation is not "reasonable" if it would impose undue financial and administrative burdens on the district. Although the parent argued that the use of a calculator would not invalidate the student's test results (which would likely lead to additional litigation), the assessment instructions specifically require districts to consider the student's use of calculators and other nonstandard accommodations when interpreting test results. Further, the use of the calculator throughout the math portion of the assessment would give the student an unfair advantage over nondisabled peers, who were likely to make some errors in their mental calculations. As such, the requested accommodation would not be in the public interest.

F. D.F. v. Leon Co. Sch. Bd., 65 IDELR 134 (N.D. Fla. 2015). The school district was not at fault for relying on Letter to McKethan when taking the position that the parent's revocation of consent to IDEA services for a hearing impaired middle schooler waived the right to services under Section 504. In addition, the district's refusal to provide 504 services did not amount to retaliation for the parent's revocation of consent to IDEA services. Even if the district erred in denying the parent's request for a 504 Plan, the parent did not produce any evidence showing that the district intentionally discriminated against the student or acted in bad faith. To the contrary, the district acted in good faith when it complied with Letter to McKethan because the letter concluded that by revoking consent to IDEA services, "the parent would essentially be rejecting what would be offered under Section 504." Without definitive guidance from a court, the letter was the best available guidance, other than the statutes and rules themselves. Finally, the district's failure to develop a 504 plan—tempered somewhat by the district's provision of a classroom amplification system and other accommodations—did not amount to disability discrimination without evidence of deliberate indifference to the needs of the student.

G. A.M. v. American Sch. for the Deaf, 65 IDELR 131 (D. Conn. 2015). In an action brought under Title III of the ADA against a private school for the deaf, the parent cannot show that the school discriminated against their son by failing to train its staff on appropriate behavior management techniques. Individuals seeking relief under Title III or Section 504 can advance three theories of discrimination: 1) intentional disparate treatment; 2) disparate impact; or 3) failure to accommodate. However, neither 504 nor ADA mandate a comparison of the services provided to other individuals with disabilities. Rather, these statutes only address whether individuals with disabilities receive services and benefits that are equivalent to those made available to nondisabled students. Therefore, it follows that a student participating in a program for individuals with

similar disabilities will not be able to satisfy the comparative component required to demonstrate disability discrimination. While the parents here did not claim that the school's policies or procedures had a disparate impact on a certain class of students, the school's motion to dismiss is granted. However, the parents are granted leave to amend their complaint to allege disparate treatment against students with ADHD and other behavioral problems.

PARTICIPATION IN NONACADEMIC/EXTRACURRICULAR ACTIVITIES

A. Cobb Co. (GA) Sch. Dist., 63 IDELR 297 (OCR 2014). No Section 504 or ADA discrimination occurred when high school student did not make varsity cheerleading because she earned a low score on her try-out performance, not because the coaches did not want to deal with her diabetes. The evidence shows that a panel of coaches selected cheerleaders for the varsity squad by scoring each candidate's performance on the same set of skills, including running, tumbling, chants and dance. The student her received a low performance score because she executed low tumbling tucks, her dance motions were off-count and not precise, and she had a slow running speed time. However, OCR did find that the district failed to provide a copy of the student's Section 504 plan to her junior varsity cheerleading coaches and ordered the district to revise its policies and practices concerning the distribution of students' Section 504 plans as a remedy for the violation.

B. C.S. v. Ohio High Sch. Athletic Ass'n, 115 LRP 34205 (S.D. Oh. 2015). Student is not entitled to a waiver of the athletic association's rule that prohibits non-resident students from participating in intramural sports. Here, a waiver of the in-state residency requirement for a Kentucky student whose parents placed him in an Ohio residential school would have no impact on the student's LD or ADHD. The student is ineligible to play sports for the school because his parents live outside of Ohio, not because of his disabilities. The parents' argument that the out-of-state placement was necessary to provide the student with educational accommodations is rejected. The parents' own testimony showed that they placed him in the Ohio school because of its superior program. He could have obtained all of the special education services he needed in Kentucky. Because the parents did not tie the association's denial of their waiver request to the student's disability, the court's previous order temporarily granting an injunction is vacated.